NIEBUHR'S

HISTORY OF ROME.

VOL. II.

THE HISTORY OF ROME

BY

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PREFACE.

This volume appears three years later than, when the second edition of the first was publisht, I confidently thought it would have done: and I am bound to explain the occasion of this delay to the friendly reader who may have complained of it.

Ever since the continuation of my history was interrupted, my mind had been in a very different state with regard to the contents of the second volume and to those of the first. With the latter I was incessantly busied. Every fresh piece of information acquired concerning the original institutions of other nations combined itself with the researches there commenced into kindred institutions at Rome; and many of my views were modified by the sight of Rome and of Italy. To the second volume, which relates only to particular points in the condition and laws of the Romans, and was never recalled to my thoughts by any such occasions, I had become a stranger. At the same time I knew well that the dissertations comprised in it were incomparably more mature and complete than those in the first. In the former, especially in that on the agrarian institutions, the investigation of which had been gone through before the design of treating the history of Rome arose

in my mind, there was nothing to correct, little to add. Other discussions, which were to be introduced, though they had not been put in writing for the press, had been in part sketcht out, as for instance that on the rights of isopolity and municipium while I was at Rome: and the substance of all of them had been repeatedly delivered by word of mouth. Thus nothing remained but the historical narrative, with regard to which I thought it certain that it was impossible to arrive at any more determinate conclusions than those contained in the first edition; so that at all events it would be useless to spend more care and go more into detail on occurrences of such a petty scale.

Under this notion I fancied that a revised edition might be completed in a few months. But ere long I saw clearly that, in spite of all scepticism, a critical examination of the facts would enable me to restore and establish a certain and credible history from the epoch at which this volume begins: and this being so, it became worth while to sift every particular with the utmost care, and during this period not to pass over what in an age of great events would have been excluded as trifling. In like manner I perceived that the changes in the constitution might be traced step by step. Under favorable circumstances even this task might have been executed rapidly, like several disquisitions in the first volume: but that volume had left me in a state of exhaustion, the consequence of the continued exertion of all my faculties directed to a single object for sixteen months without any intermission, except now and then a very few days. My sight grew dim in its passionate efforts to pierce into the obscurity of the subject:

and unless I was to send forth an incomplete work, which sooner or later would have had to be wholly remodeled, I was compelled to wait for what Time might gradually bring forth. Nor has he been niggardly, but, though slowly, has granted me one discovery after another. I must not admit, that this exhaustion, which in fact resembled the dizziness of a person long deprived of sleep, excited a vehement desire for some different employment; and this led me, most inconsiderately, having already such a task as this history on my hands, to engage in editing the Byzantine historians: which, along with other laborious occupations, for instance the revisal of the third edition of the first volume, greatly impeded the progress of my plan after it had been twice recast. As I wisht to carry them all on together, my health, serenity, and clearness of mind for a time deserted me.

At length I had got quit of many of these interruptions: many of them were overcome: I again felt free and cheerful: the first sheets were written out, and were to be sent to the press the next morning, when the calamity which befell my house during the night, destroyed them all, with the exception of a leaf that I happened to have lent to a friend. The materials however had been preserved; and my spirit did not fail. Seven weeks after my misfortune the lost manuscript was replaced; and the printing began. At another season this delay would have had no influence on the execution of my work. But only two thirds of it were completed, when the madness of the French court burst the talisman which kept the demon of the revolution in bonds. The remainder has been written under a feeling that it was a duty not to leave what I had begun unfinisht, amid

constant efforts to repell the harassing anxiety ever pressing upon me, from the prospect of the ruin which menaced my property, my dearest possessions, and my happiest ties. The first volume was written when everything was smiling around me, and I was thankfully and heartily enjoying it, in perfect unconcern about the future. Now, unless God send us some miraculous help, we have to look forward to a period of destruction, similar to that which the Roman world experienced about the middle of the third century of our era,—to the annihilation of prosperity, of freedom, of civility, of knowledge. Still, even though barbarism should for a long season scare the muses and learning entirely away, a time will come when Roman history will again be an object of attention and interest, though not in the same manner as in the fifteenth century.

But for the breaking out of this tremendous calamity, I should have hastened after a short interval of rest to complete and publish the third volume; of which the part comprehended within the limits of the original second volume has already been planned, the remainder down to the first Punic war only wants a last revision. If peace be allowed to continue any time, this shall be the first work I take in hand.

In the present volume the space occupied by the narrative is still inconsiderable when compared with the dissertations. This proportion is entirely changed even in the parts of the next which are already composed. It was to go down to the second Punic war: and having felt interested and animated by what I had already written, I rejoiced, at the time when it seemed that the completion of the remainder could not be far off, in the

prospect of having hereafter to represent and portray men and events. Whenever I have been able to do so, with any confidence in occurrences of the least moment, I have done it in this volume. But I could not bring myself to repeat stories, on the face of which it was evident that they were merely invented by the annalists to fill up the canvas. The endeavour to impart my own firm conscientious conviction with regard to every proposition and every thought to my readers is here, as in the first volume, the only principle that has guided me, both as to matter and to manner. Whenever I could do so at once briefly and cogently, I was the better pleased: and in the period before the decemvirate this purpose often appeared to be answered by the citation of a single decisive passage, chiefly from Dionysius. In the subsequent part, especially where Livy is our only authority, and every other trace that might guide us is lost, my object frequently was not to be gained without discussions, which, as I wisht to assert nothing arbitrarily, and not to reckon on the disposition of my readers to agree with me, may have grown at times almost prolix, and may not be altogether free from repetitions.

BONN, *October* 5, 1830.

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THE HISTORY OF ROME.

It was one of the most important objects of the first volume to prove that the story of Rome under the kings was altogether without historical foundation. I have sifted the legends which have taken the place of history: such fragments of the same sort as lay scattered about, I have collected, with the view of restoring the manifold forms they once bore; though with no thought that this could bring us nearer to historical knowledge. For, while the grandeur of the monarchy, the seat of which was on the seven hills, is attested by the monuments it left behind, the recollections of its history have been purposely destroyed: and to fill up the void, the events of a narrow sphere, such as the pontiffs after the Gallic irruption were familiar with, have been substituted for the forgotten transactions of an incomparably wider empire. Even Fabius beyond doubt knew nothing more than the story that has come down to us: and it would hardly have been possible for him to find any authentic records, unless in the writings of forein nations; which he could never have reconciled with his own story, or made any use of. On the other hand his age was in possession of a real history, though in many parts tinged with fable, since the insurrection of the commonalty: and though this has only reacht us in a very defective state, disfigured by arbitrary transformations, yet from this time forward it becomes my cheering task to undertake the restoration of a genuine, connected, substantially perfect history.

This would be absurd, if the story of the city before its destruction by the Gauls had been left almost exclusively to oral tradition, and if the scanty records then existing of an age little given to writing had perisht[1]. Were such the case, we could only replace it, like that of the kings, by an illusion. Livy however assuredly did not go so far as to assume this. Nor will anybody who has a feeling for truth think it possible, with regard to much the greater part of the occurrences related out of the century before the coming of the Gauls, that they should be fabrications: stories are often invented, not so a multitude of insulated facts. What led Livy to speak thus positively, was probably that the Annals of the pontiffs began from that event[2]; as Claudius Quadrigarius, perhaps influenced by this very circumstance, commenced his at the same point[3]. This writer was one of the annalists whom Livy had before him: and perhaps Livy's words merely repeat what he alleged to justify his deviating from the common practice of like chroniclers. It is pretty clear too that he must be the Clodius, whom Plutarch quotes as asserting, what he probably said on the same occasion, that the pedigrees, so far as they went back beyond that date, were fabrications[4]. Where an errour has gained general sway, the first expressions of a mind that feels called to assert its freedom are almost always exaggerated: and such was the case with

[1] Livy, VI. 1. Parvae et rarae—literae fuere—et, etiamsi quae in commentariis pontificum aliisque publicis privatisque erant monumentis, pleraeque interiere.

[2] See Vol. I, p. 250. Livy himself may be regarded as a witness of this, if we suppose that in the passage just quoted he names the commentaries of the pontiffs, which were preserved, instead of the Annals.

[3] A good many fragments of his first book remain, which speak of events between the Gallic and the second Samnite war; but there is no trace of anything earlier.

[4] Numa, I. Κλώδιός τις ἐν ἀναγραφῇ χρόνων.

Claudius in his disgust at finding such a mass of imposture. He overlookt that there was no external reason to warrant his rejecting the genealogies of those patricians whose ancestors had their Lares on the Capitoline hill, like the Manlii and Quinctii, as spurious during the earlier ages: and how could he examine them in detail? Had he, or had Livy attended to constitutional law, they must have perceived that its excellent historians had drawn information from the books of the pontiffs, the authenticity of which was quite as indisputable as that of the twelve tables, of the compacts between the estates, and of other laws and treaties belonging to that period. Equally well establisht is that of the returns of the censuses, were it only because their statements must in later times have sounded utterly incredible and inconceivable. It is true, the copies of most of the censorian families must have flowed originally from transcripts of a few, preserved in the Capitol, or in neighbouring towns: but it was enough for their coming down in a genuine form to posterity, if a single one remained and was multiplied.

It cannot be doubted that, as these rolls were preserved for memorials in the censorian families, so those who had the image of a consul among their ancestors, kept consular fasti, wherein memorable events, at least of the year they were interested in, were noted down: and many others must have been in possession of similar documents. These were original annals, which arose independently of those of the pontiffs, and were drawn up by various persons; not always contemporaneously, but in their earliest parts from the recollections, sometimes no doubt erroneous ones, of the writer himself, or of his neighbours, touching past events. Hence the dates are often contradictory: the Auruncian war for instance is placed in the years 251, 252, or 258; the battle of Regillus in 255, or 258; discrepancies only to be accounted for from there having been sundry annals of

different origin. It is impossible to pronounce whether any contemporary ones were preserved or not, which began any number of years before the insurrection of the commonalty. That none of them can have gone back so far as the origin of the consulate, is clear from the confusion in the Fasti for the first years of the republic, and from the disappearance of every trace of a genuine history during this period. To preserve the recollection of events, and to give the memory a hold, they were noted in the Fasti under a year of the Capitoline era, and of the consuls; in the same way as the calendars recorded, under a certain day, that on that same day the dictator Tubertus had gained a victory, as well as what days had become inauspicious by the defeats on the Allia, at Trasimene, and at Cannae. Neither these accounts, nor the former gave any detail of occurrences, but merely mentioned them. Of the notices so recorded some few have come down to us, manifestly handed from very ancient times, with scarcely an alteration even in the wording[5]. I will not however by any means deny that some sort of narrative may have been mixt up with them very early: in which case they must have resembled the chronicle of Marcellinus and the like.

But the appropriate place for narrative was in the funeral orations peculiar to Rome, the use of which was derived from time immemorial: for women were admitted to a share in this honour even before the Gallic war, or immediately after. These writings, in which assuredly it was no less vain to look for an accurate representation of facts, than for eloquence, Livy, if they crost his thoughts, would hardly have deemed a historical source; since in another passage he concurs with

[5] For instance in Livy, II. 19: His consulibus Fidenae obsessae, Crustumeria capta, Praeneste ab Latinis ad Romanos descivit. What a contrast between this and the prolix delineation of resultless battles in other passages!

Cicero in reprehending their want of truth[6]. Yet they cannot have been liable to this charge from the first. Only in course of time, when it became customary to enumerate the ancestors of a house up to its origin, along with their honours and their exploits[7], could vanity indulge in inventions concerning them. One may easily satisfy oneself that, in the history prior to the taking by the Gauls, many stories, for instance about the Valerii, the Claudii, the Fabii, the Quinctii, and the Servilii, have flowed from this source. Several among them, such as those concerning the Servilii, are worthy of full faith: those too more in detail about the Fabii contain matter of undeniable authenticity. With others the case is very different. I am sorry to say that those of the Valerii are less deserving of credit than any others; just as their pedigree betrays singular carelessness[8]. These documents, as well as the former, were deposited in the hall of the house; and they were probably lost and then restored together. Those living traditions however, by means of which the times of their ancestors became the common property of the Romans, were preserved by those who escaped the sword of the Gauls: and if Livy was speaking of these, he was unquestionably right in saying that the record of events was trusted to memory.

The same thing has happened among every people whose annals were a mere dry catalogue of events: and not only does the imagination in such cases mould a subject taken from history with the same freedom and

[6] VIII. 40. Cicero, Brutus, 16 (62).

[7] The account of the Claudii in Suetonius, at the beginning of his Tiberius, was drawn from the orations of that house, and exemplifies the nature of such enumerations.

[8] C. Valerius Potitus is described as L. F. Vol. N; although his first military tribunate was in the year 340, that is, 71 years after the consulship of his pretended father, and 96 after the first consulship of Publicola, who would be his uncle.

plastic power as one created by poetry; but the characters have incidents, which elsewhere are told of others, transferred, and often purely arbitrary fictions ascribed to them; which gain credit, like Charlemagne's pretended expedition to the Holy Land. Such legends, whether concerning the personages of history, or those of poetry, were equally termed *fabulae*. That at Rome as elsewhere they shaped themselves in verse,—that the virtue of Coriolanus, and the victories of Camillus, were sung in the same manner as the first Punic war,—does not to my feelings admit of a doubt. If the bards are nameless, so are those of the Nibelungen and the Cid. But the rhythmical form is a secondary matter. The main point is, that we should recognize how the very stories which speak to the feelings, are those which tradition treats freely and creatively; how it does not give back the chain of incidents one by one, as it receives them; and how, in proportion as a story is listened to with general interest, it is the more liable to be transformed without any limit, until it becomes fixt in some book: while on the other hand such facts as excite no emotion come down just as they were recorded, to the historian who likes to employ himself in putting some life into them. This is not disputed by scholars, whose concurrence I should be loth to forgo, yet who think it hazardous to build on the assumption that the Romans had a body of popular poems now lost: and so I will not disturb the consciousness of our being substantially agreed, by labouring to make them adopt the whole of my own conviction. Besides I am far from asserting that all those traditions were originally circulated in song: nor do I doubt that some, which began in verse, were turned into prose-tales, when writing became more and more an employment; just as the popular storybook of Siegfried arose out of the Nibelungen. Among the legends of the class I have been describing, those of Coriolanus, of Cincinnatus, of the fall of the

Decemvirs, of Camillus, are not to be mistaken. Of the same kind, with some excursions into the region of the marvellous, are those of Curtius and Cipus*.

Long before there is any such thing as a national literature, many a man will write down an account of what has befallen him, for the use of his family. In the progress of things almost every one will aim at surpassing his predecessors, will go more into detail, take in more objects, and make approaches to a complete narrative of contemporary events: and as every chronicle must begin from the beginning, a new one subjoining itself as a continuation to a repetition of some older annals already extant, attempts are made to render these too less meagre, by incorporating popular traditions. At Rome the funeral orations likewise were drawn upon; though there was a difficulty in making such insertions, owing to the form of the Annals, which required that everything should be set down under a particular year. In this way a variety of popular books must have grown up, which, before a different taste and standard became prevalent, were great favorites, and which in the fifth and sixth century of the city must have spread the more widely, in proportion as the old legends lost the freshness of their original colouring: in aftertimes however they were neglected by literary history, for this among other reasons, that their authors were unknown. The oldest remaining Florentine annals[9] are themselves pieced together out of some no less dry and meagre than the original Roman ones, along with fables and traditions. In the history ascribed to Malispini they are enlarged, and prolonged by a series of continuations. This work, by which they were superseded, and which itself has been thrown into oblivion by Villani, is of the same kind as those fuller Roman chronicles I have been speaking

* Valerius Maximus, v. 6. 3.

9 Which have been publisht by Lami.

of: the existence of which however was totally forgotten by the classical writers of Rome, as the sayings of Appius the Blind would have been, unless Panaetius had spoken of them*. In such books Coruncanius and the Marcii read the story of their fathers; and later writers added little of importance, any more than Villani could do to what Dante had read in Malispini.

The Fabian house, as they were eminent for their skill in the arts, and their familiarity with Greek literature, would probably be especially careful in keeping such a chronicle: the account of the campaign of the great Q. Rullus in the year 451 is evidently taken from contemporary sources. Out of this house came the historian whom Polybius censures for his partiality to his countrymen†; a partiality occasioned by the hostile feelings of the Greeks, for whom, and not for his fellow-citizens, he wrote in Greek, like Cincius and Acilius, in order that they might think more worthily of Roman story. Though this might be sufficient for foreiners, it did not satisfy the Italians, who were already desirous of becoming Roman citizens, and were acquainted with the Latin language: which may have been one of the causes that at length in the seventh century Roman authors wrote the history of their country for readers in their mother tongue[10]. That the Romans had a general knowledge of their ancient history, is proved by the fact that Cincius treated of chronology, of constitutional law, and of sundry antiquarian questions, which imply such a knowledge; and yet did not think it necessary to write his history in Latin. For the same reason Cato only handled the Roman history as part of that of Italy. After the time of Cassius Hemina however the historians of Rome were numerous. The perpetual discrepancies

* Cicero, Tusc. IV. 2. † I. 14, 15: III. 9.

[10] The poem of Ennius indeed was earlier; but its object not to teach history.

in them shew that there was a great variety of old chronicles: and their all thinking it their business to tell the whole of the ancient history anew is a sign that every one of them, on finding any chronicles previously neglected, incorporated fresh matter from them. For assuredly no notion of distinguishing himself by any peculiar merits in his views or style was ever entertained either by Fabius Servilianus or by Vennonius; or by writers who lived considerably later, indeed after the time of Sylla, Cn. Gellius[11] and Q. Quadrigarius. To the same class belongs Q. Valerius Antias; who however obtained a scandalous notoriety by his falsehoods, and by fabricating circumstantial narratives and definite numbers.

L. Piso had a peculiar object in view. He fancied that the ancient legends, however contradictory and incredible, were only history run wild, and that he was the person destined to restore them to their genuine form. Men's minds however in his days had still so much of poetry in them, that his ungenial efforts produced no effect. Notwithstanding the old censor's great personal respectability, his annals were not more successful than any others in attaining to the reputation enjoyed among the Greeks by the work of Ephorus; which was recognized to be the basis of their national history, and as such was continued by one writer after another. Even after the time of Piso the early history was the subject of fresh investigations: for men had learnt to make use of ancient documents; and as Philochorus

[11] It has been assumed that there were more than one Gellius, owing to the expression of Dionysius, I. 7: Αἴλιοι καὶ Γέλλιοι καὶ Καλπούρνιοι· which however means nothing more than when the English talk of their *Clarendons* and *Humes*. Nor has anybody taken it into his head that there were several Calpurnii. In Cicero, de Leg. I. 2 (6), *Gellii* has only been introduced by a conjecture, probably suggested by the spurious Origo Gentis Romanae, where a Sextus Gellius has been fabricated; apparently after the passage of Dionysius.

corrected the history of Athens by their means, the same service was rendered to that of Rome by C. Licinius Macer, a contemporary of Cicero, with whom the list of the annalists properly so called closes. Macer's influence on the history that has come down to us is very important. We cannot suppose that Dionysius and Livy did anything for the speeches they insert, except work them up as pieces of oratory. Those speeches however are frequently something more, and contain allusions to circumstances of which their narratives shew no knowledge, but which cannot possibly have been brought in at random[12]. Where such is the case, they must have found something of the kind in some annalist whose imperfect work they were remoulding[13]. Now it is not likely that those who wrote in the simple old times would have employed so much art: whereas of Macer we are told by Cicero that he was immoderately fond of speeches[14]. He may not have been successful in them: but we can easily conceive that the only one among all the annalists after Piso who had taken part in public life, wherein he had displayed a very honorable character, would like to dwell on those points where he was in his own element. Of him too we may believe that he would trace the changes in the constitution with intelligence and interest. The oldest Roman books, of which the names have been handed down, were collections of statutes: and I have already mentioned the writings of Cincius on constitutional law. Eighty years after his time, C. Junius, who from his friendship with the younger Gracchus was surnamed Gracchanus, wrote a history of the constitution and the great offices of state, which went back to the

[12] As in the passage quoted in Vol. I, note 1341.

[13] Indeed one may assume that Livy took every circumstance in his narrative from some one of his predecessors, and never added anything of his own, except the colouring of his style.

[14] De legibus, I. 2 (6).

time of the kings; and which from the establishment of the consulate enumerated, under the years of the Capitoline era, what new magistracies had been instituted, and what changes made in the duties of the old ones. Copious remains of this invaluable work, which must have been entirely compiled from the writings of the pontiffs, and the other most authentic sources, have come down to us, owing to the circumstance that Gaius prefixt a history of the Roman magistracies to his books on the twelve tables; of which history much has been preserved in the honest extracts of Lydus, and in what Pomponius has appropriated. Had Livy and Dionysius, some statements in whose works can only have come originally from Gracchanus, themselves made use of him, there are a number of other things that they would not have left out. But they might easily pass them over, if Macer, who assuredly was not similarly negligent, was the source whence they drew these solitary passages, not considering the information of this sort as of higher value than the other matter derived from the Annals, a great deal of which they omitted. And if, as would appear from hence, they did not directly make use of that admirable teacher of constitutional law, unquestionably the nameless chronicles were to them a mere dead letter. A proof how rapidly Latin books disappeared after the rise of a classical literature, for the sake of which that of the primitive ages was utterly despised, is that in the beginning of the eighth century the memoirs of Scaurus and the elder Q. Catulus were as completely forgotten * as those of J. J. Moser are nowadays in Germany. The only works used by the two ingenious authors who wrote histories of Rome contemporaneously under Augustus, were those of Fabius and the later annalists; the contents of which they moulded into a uniform body, without any regard to their origin. As Poggius

* Cicero, Brutus, 29. 35.

and Leonardus were cast into the shade by Machiavel, in like manner the annalists of the seventh century were so eclipst by the excellence of Livy, that they were never brought forward again till after the time of Hadrian, when the partisans of antiquity affected to be fond of them. Nor did this last long: for no fashion can be durable, which runs counter to the real inclinations of mankind. Thenceforward the history of Rome was received and related exclusively under the shape those two writers had given to it: although Dion Cassius emancipated himself from this state of dependence, and returned to the most genuine form of the old tradition in Fabius. Nor can he have neglected Gracchanus, who at that time was known to every jurist: for the history of the constitution was his main and constant object.

It is also mine: and the highest aim of my researches is to approach to the notion which Fabius and Gracchanus had of the constitution and its changes. Beyond a doubt their views concerning it were unqualifiedly right. Surely however we may hold that our age can distinguish fable from reality more successfully than theirs. Nor is it an audacious undertaking to try to make out in the narratives of the historians, what part is due to their misunderstandings, prejudices, or arbitrary insertions,—what part rests on authentic documents,—and, to distinguish, among the materials which they found in the annalists, how much comes from each of the before-mentioned sources,—and moreover, with regard to the time before the destruction of the city, whether the statements were borrowed from earlier sources, or fabricated. Yet even if we had the books of the seventh century, on which no art had been exercised in softening the most glaring inconsistencies, this analysis could not be so successful as to extract an unbroken history from them in the simple style of a chronicle. For though that which really happened has often been recorded in the Annals along with the legend, and though the latter,

having been engrafted on the record, may be separated from it easily and perfectly[15], the legend still oftener, and probably very early, entirely occupied the place of the brief statement of the truth, and has so completely supplanted it that no trace of it remains, and no ingenuity can effect its palingenesy. It is easy to shew that the taking of Veii by a mine is a sheer fable: but we cannot divine the real state of the case, as in some other instances we may without difficulty or uncertainty.

It is in the history of the constitution that we may feel the greatest confidence in restoring many of the steps that are wanting. Those which precede and follow enable us to determine them, like the data in a problem. On the other hand we here meet with a peculiar difficulty, from the circumstance that not a few of the most important statements, among those too which are derived from the very highest authorities, sound utterly unmeaning, because the persons who have handed them down to us were quite unable to understand them. Dionysius excogitated the most erroneous representations, which pervert whatever they exhibit; because he never suspected that he wanted the fundamental idea of the constitution, and did not resolve to abandon all attempts at making out the enigma. Lydus stammers words without thoughts. If we discover the delusive medium however, by which objects were distorted before the eyes of the acute historian, and can guess what the simple compiler must have heard of, these enigmas turn into valid evidence, and so form grounds for further results.

I cannot disguise from myself that these inquiries touching the changes of the constitution, and still more those about other insulated occurrences, can hardly produce

[15] The battle of Regillus for instance, from the genuine statement inserted above in note 5,—the expedition of Coriolanus against Rome, from that of Attius Tullius,—the dictatorship of Cincinnatus, from the authentic account of the campaign of Minucius on the Algidus.

the same kind of general conviction as the investigation of what the constitution originally was. The forms of the latter may be traced through centuries in their operation, and even in the modifications they underwent: and what we do not find recorded in one people, we learn from the analogy of a kindred one. The former are events that stand alone, depending on accident and caprice, or at least on the will of individuals: and the true account, it must be owned, is not always the most probable. But when an inquirer, after gazing for years with ever renewed undeviating stedfastness, sees the history of mistaken, misrepresented, and forgotten events rise out of mists and darkness, and assume substance and shape, as the scarcely visible aerial form of the nymph in the Sclavonic tale takes the body of an earthly maiden beneath the yearning gaze of love,—when by unwearied and conscientious examination he is continually gaining a clearer insight into the connexion of all its parts, and discerns that immediate expression of reality which emanates from life,—he has a right to demand that others, who merely throw their looks by the way on the region where he lives and has taken up his home, should not deny the correctness of his views, because they perceive nothing of the kind. The learned naturalist, who has never left his native town, will not recognize the animal's track, by which the hunter is guided: and if any one, on going into Benvenuto's prison, when his eyes had for months been accustomed to see the objects around him, had asserted that Benvenuto like himself could not distinguish anything in the darkness, he would surely have been somewhat presumptuous.

The portion of history comprised in this volume has been given up and cast aside, ever since the multitude of impossibilities and contradictions in the current narrative were noticed. Indeed a sensible man could not hesitate how to choose, were there no other alternative, except to defend what has been made of it, or to get rid

of it altogether. The best things in the world degenerate in course of time, and often in no long one; and worthless appendages attach themselves thereto: and then, if a foolish zealot would force us to do homage to them, as before they were degraded and corrupted, he repells reason from them, which might otherwise restore their character, and thereby revive the feelings they formerly excited: for reason can forgo knowledge, but cannot put up with absurdities. Historical criticism, by merely lopping off what is worthless, replacing tradition on its proper footing, demonstrating its real dignity, and thus securing it from ridicule and censure, will render the story of Rome during the period following the league with the Latins no less authentic and substantial than that of many much later periods, where we are in like manner left without contemporary records.

THE LATIN STATE.

In the same year in which the orders adjusted their quarrel, the Romans ratified a perpetual league[16] with the Latins. Peace had already been restored three years before, and had brought back a definite federal relation between the two states[17]. But the league of Sp. Cassius did not merely confirm and explain this. It was a new treaty[18], substituting an acknowledgement of complete equality for the subjection introduced by Tarquinius, or else for the easy dependence to which Latium had submitted under Servius. We are not told which of these was the relation renewed at the peace: but the latter supposition is the more probable. Though it is certainly possible that the Latins, through a timidity which the scantiness of our information does not permit us to explain, and because they were not so far heated by passion as to prefer an alliance with the Volscians, may have returned to their former vassalage; and yet, two or three years after, have been able to extort a recognition of their absolute equality, and even cessions of land and subjects, from the distress of the government, as the price of their goodwill against the insurgents. Dionysius is

[16] It was to be in force so long as heaven and earth should keep in their place: Dionysius, VI. 95.

[17] *Τὴν ἀρχαίαν φιλίαν καὶ συμμαχίαν—ἀνενεώσαντο.* Dionysius, VI. 21. According to Livy it fell in 259: he does not expressly mention the concluding of a peace, but relates the release of the prisoners: II. 22.

[18] *Συνθῆκαι καιναὶ μεθ' ὅρκων.* Dionysius, VI. 95.

aware that these sacrifices were connected with the agreement between the senate and the Latins to oppose the rebels[19]. He considers them as a reward bestowed on the Latins for their good spirit; which is the view Roman pride would take of them, and is assuredly the sole reason why the date of the league was placed after the peace of the Sacred Mount[20]. As there is no historical ground to settle this point, we may allow internal probability to do so, and may suppose that the senate and the houses granted the great concessions in the new treaty, as the price of succour so powerful that it induced the seceders to content themselves with very moderate terms.

The Latin state, which now leagued itself as an equal with Rome, was but a small part of the Latium mentioned in the treaties with Carthage. In the list of its thirty cities[21] one name is doubtful: of several the site

[19] *Ἐπειδὴ τοῦ πολέμου τοῦ πρὸς τοὺς ἀποστάτας ἑτοίμως ἐδόκουν συνάρασθαι.* VI. 95.

[20] This is done by Dionysius, VI. 95, expressly; and by Livy, when he supposes that at the time of the treaty Cominius had taken the field against Antium.

[21] The principal passage where the Latin townships are enumerated,—Dionysius, V. 61,—is mutilate in our editions, because the first editor of the Antiquities unfortunately lighted on a very bad manuscript, though the majority of those preserved have generally a good text. From the Vatican manuscript, and from Lapus, the names that have dropt out of this passage, and the corrupt ones too, with a little aid from conjecture, may be restored as follows: *οἱ πρόβουλοι ἀπὸ τούτων τῶν πόλεων ἦσαν· Ἀρδεατῶν, Ἀρικηνῶν, Βουβεντανῶν, Κόρνων, Καρυεντανῶν, Κιρκαιητῶν, Κοριολανῶν, Κορβίντων, Κορανῶν, Φορτινειῶν, Γαβίων, Λαυρεντίνων, Λανουηΐων, Λαβινιατῶν, Λαβικανῶν, Νωμεντανῶν, Νωρβανῶν, Πραινεστηνῶν, Πεδανῶν, Κορκοτουλανῶν* (Querquetulani), *Σατρικανῶν, Σκαπτίνων, Σητίνων, Τελληνίων, Τιβουρτίνων, Τυσκλανῶν, Τολερίνων, Τρικρίνων, Οὐελιτρανῶν.* The *Corni* are the same as the *Corniculi*, the people of Corniculum: see Vol. I. note 219. But, though *Κόρνων* must not be changed into *Κορανῶν, Καβανῶν* must. For Cora, which occurs as a Latin town in Cato, quoted by Priscian, IV. 4 (21), and in Dionysius (III. 34),

is unknown: in fact they are not named anywhere else. Still the boundary of the country may be traced with sufficient certainty. It began by the sea, west of Laurentum, thence ran along parallel to the Tiber, crossing the Anio, and stretching to the northwest of Nomentum; then took in the territory of that city, as well as of Corniculum, Tibur, and Praeneste; after which it past over the hights forming the watershed between the two seas, so as to include mount Algidus and Velitrae; and then trended eastward, along the southern range that overlooks the Pomptine marshes, comprehending the hills on which Norba, Cora, and Setia stood, and reacht the sea again to the east of Circeii. Antium, which at this time was undoubtedly still occupied by Tyrrhenians, was encompast by this Latium on the land-side, but was separate from it.

Thirty places are enumerated in the passage just quoted: and the notion that this number was an essential characteristic of the Latin people was so deeply rooted, that Dionysius uses the expression *the thirty towns*

cannot have been separated from Latium at the time when Norba, and Setia which lay yet further off, still belonged to it; although one of these passages relates to an earlier period than the list; and the other can only be applicable to a later. *Norbani* for Μωρεανοὶ may be merely a conjecture of Lapus and Gelenius, but is quite certain, being confirmed by the order of the names, which obviously follows that of the Latin Alphabet. The substitution of Καρυεντανὸς for Κορωεντανὸς is derived from Stephanus under that word. *Corbintes* is the name for the citizens of Corbio. So that the only one still uncertain is Φορτινειοί. As this name stands between C and G, F was clearly its initial: and since this letter often interchanged with H, the place meant might be the same which in the manuscripts of Livy, III. 30, is written *Hortona*, in Dionysius, x. 26, Βιρτών: but the name of the Albian town *Foretii* (Vol. I. note 570) seems to come still closer to it. Of the places destroyed in early times, Carventum must have been situate in the eastern district, in the neighbourhood of Lavici or Bolae; Corbio in that of mount Algidus; Toleria not far from Bolae; Satricum between Lanuvium and Antium; Scaptia near Velitrae.

as tantamount to the Latin nation[22]. Such he conceives to have been the number of the Latin towns dependent on Alba while it flourisht; a notion, the correctness of which is attested by the numbers of the Roman curies and tribes, by the thirty Albian townships, and still more decisively by the tradition about the six hundred families* who converted Lavinium into a joint colony of the Albans and of their Latin dependents[23]. But he is mistaken in considering all those thirty places, which became free after the fall of Alba, as colonies sent out from that capital: though the same opinion lies at the bottom of the legend, which reacht the Greeks, that Aeneas built thirty castles in the land of the Borigoni[24]; where this number again appears as essential

[22] III. 34, of Tullus Hostilius: πρέσβεις ἀποστείλας εἰς τὰς ἀποίκους τε καὶ ὑπηκόους αὐτῆς (τῆς Ἄλβης) τριάκοντα πόλεις.

* See Vol. I. pp. 200, 201.

[23] There are some heavy ases without inscriptions, having on one side a well-drawn head of a youth with a Phrygian bonnet, on the reverse a wheel with six spokes. In the former I recognize Ascanius, in the latter the six centuries of the Lavinian colony, the settling of which at the common sanctuary of the Albans and Latins may be regarded as a historical fact. Having often exprest my hearty disgust at the process of distilling a history of primitive times out of words, names, and mythological rubbish, I hope I am not sliding into the same track myself (*Parthis mendacior*), when I believe I have discovered that the worship of the Penates belonged to the Tyrrhenians; and that Alba, a name which occurs on the Fucine lake in the original seats of the Priscans, was founded by these Sacranian conquerors (see Festus, Sacrani), who, at a period when they acknowledged a Latin state of thirty towns as their free confederate, joined with it in founding a city near their common temple, after having for a time usurpt the custody of its gods. The most obvious way of explaining the current story is, to suppose that, when the Tyrrhenian Latins had recovered their strength, and overpowered Alba, tradition took the shape of representing Alba as having originally been a colony from Lavinium. To return to the coins: I will not dispute with any one who should ascribe them to the Lavinians alone: their weight however supplies a good reason for dating them earlier than 410, and assigning them to the united states of Latium.

[24] Lycophron, v. 1253. See Vol. I. p. 81.

to Latium. I shall revert to this subject presently, and shew that several places may have been at once Alban colonies and original townships of the Latin people. But I have first to meet the question, how there came still to be thirty cities in the year 261, if Apiola, Cameria, Collatia, Crustumerium, Ficana, Medullia, Politorium, the conquests of the Roman kings, were reckoned in the primitive number: and that they were so can as little be doubted, for instance in the case of Medullia, as in that of Corniculum, Nomentum, and Tellena, which are contained in the list.

The influence of numerical forms in the states of antiquity solves this puzzle. A state was not considered as an aggregate of parts joined together, but as though its internal arrangement were determined by the nature of the whole, and by a hereditary law belonging to each particular people. A violation, whether by excess or deficiency, of the exact proportion peculiar to it was deemed intolerable: and since there was no preventing such breaches from being made by time, they were remedied by the remodeling of the whole body, by adopting new members, by splitting one part into several, or tacking several together. Twelve was the fundamental number of the Ionians[25]; which appears in their towns in the Peloponnesus and in Asia, as well as in the Attic *τριττύες*. But we find two different lists of the Peloponnesian cities, after they had become Achaean[26]: and the later of them names Leontium and Cerynea, instead of Aegae and Rhypes: not that either list is incorrect; but the old towns had gone to decay and were lost[27], and their places were filled up, that the number might be

[25] Their primary number was four: then each quarter was subdivided into three.

[26] In Herodotus, I. 145, and in Polybius, II. 41.

[27] Strabo, VIII. p. 386. a, expressly says this of Aegae, and remarks that it had been united with Aegira.

kept complete. Smyrna fell into the hands of the Ionians early*, and soon left most of the twelve cities far behind her in splendour and influence: but as no place fell vacant, she continued excluded from the honour of being one of the Ionian cities; till at length the force of prejudice so far relaxt, that a thirteenth city was no longer deemed an impossibility†. The same change of views in Achaia rendered it unnecessary to replace Helice and Olenus. On a principle like that of the ancient states, the division of the Frisian nation into seven sealands was retained, though their southern boundary retired from the Schelde to Kenheim, and at last as far as the Vlie.

Thus Latium, as long as the old forms were deemed inviolable, continued to be divided into thirty townships: and this list underwent several changes. The two kingdoms of Latinus and Turnus, the latter of which reaches from Ardea to Terracina, are not an arbitrary fiction of Virgil's, only the scholia are unfortunately wanting, which would have told us whether this division of the Latins into two states, like the Samnite cantons, rested on Cato's, or on what other authority. We may assume that, as Ardea was the capital of the second state, so Laurentum was that of the first; and that the Latini, who are opposed to the Turini[28], were already divided into thirty cities before the Priscan conquerors founded Alba. Virgil assuredly had an equally good warrant for naming Nomentum, Gabii, Fidenae, Collatia, Pometia, Castrum Inui, Bola, and Cora, as colonies of Alba[29]. These colonies must not be confounded with the Albian townships; which

* Herodotus, I. 150.

† Pausanias, VII. 5. 1; Strabo, XIV. p. 633. d.

[28] Vol. I. p. 44.

[29] Aeneid, VI. 773, foll. Livy terms them Latin colonies, II. 16: which may be considered as an inaccuracy of expression. Cora was originally a Siculian or Pelasgian town: for its foundation was referred to Dardanus: Pliny, III. 5.

were undoubtedly nothing but the tribes of the plebs of Alba, as the genuine Albans were the populus: and yet two of these names, Fidenae and Bola, occur in the list of those townships; while Nomentum, Gabii, and Cora appear among the thirty Latin towns in Dionysius; and Pometia also was at one time included in the Latin state. Here again analogy lends us light. The most ancient Roman colonies disappear, because they are incorporated in some of the regions, and their inhabitants in the plebs; others become Latin cities: and thus it may be supposed that among the Alban colonies, some became part of their plebs, and that others were ceded to the Latins, to repair the diminisht number of the thirty townships, at a time when the Latins were independent, although not on a footing of perfect equality with the Albans. These were thirty cities of a second period.

Subsequently, after the destruction of Alba, the Latins framed a third republic, again consisting of thirty cities, but with very different boundaries. Alba must have fallen, before the five or six places in the list of Dionysius, which so long as she stood were demes in her territory[30], were numbered among the thirty Latin towns: and several previously included among them, the inhabitants of which, together with part of the commonalty of Alba, formed the original stock of the Roman commonalty in the reign of Ancus, had been separated from them, whether by conquest, or by exchange of territory*. It was with this Latin state that Servius Tullius entered into alliance, a fact which must be considered as resting on a historical foundation, however little this can be admitted in general as to the accounts of alledged transactions between the Roman kings and the Latins: and it probably retained the same boundaries, until Tarquinius subjected it to the kingdom of Rome. But, of the towns named in our list, Gabii cannot have been a

[30] Vol. I. note 570. * See Vol I. p. 355.

member of the Latin union, since it concluded a separate alliance, as an independent state, with the same Tarquinius. Circeii may have been annext to the number by that prince, if the colony he founded there was a Latin one: until then it had continued a Tyrrhenian city, and from the remoteness of its situation can have had no connexion with the Latins. On the other hand, Pometia, before its capture and consequent destruction, must have been one of the thirty towns: and accordingly it appears among those which dedicated the grove at Aricia[31]. Crustumeria too must at that time have been in the number; whereas in 261 it could not be so any longer: for it had been conquered, and its citizens formed the tribe named after it[32]. Hence it is clear that the list in Dionysius, on which I must still dwell a little longer, is erroneously described by him[33] as a list of the cities which decreed the war against Rome. In fact it is utterly inconceivable that the original instrument containing this declaration of war should have been extant even in the days of the earliest annalists. The list was undoubtedly found in the record of the league with the Latin union, which so late at least as when Cicero and Macer were young men, was to be read on a column at the back of the rostra[34]: in such a document an enumeration of the cities was in its place. But Dionysius found it more suitable to his mode of treating the subject, to prefix this long muster to the

[31] Cato, Orig. II. quoted by Priscian, IV. 4 (21).

[32] Livy, II. 19. Vol. I. p. 561.

[33] v. 61.

[34] Cum Latinis omnibus foedus ictum Sp. Cassio Post. Cominio coss.—nuper in columna aenea meminimus post rostra incisum et perscriptum fuisse: Cicero, pro Balbo 23 (53); where *cum Latinis omnibus* may perhaps refer to the enumeration of all the towns. This column, which after the Julian law lost all value except as a piece of antiquity, was probably removed in the time of Sylla, when even statues were taken away from the comitium: we need not construe *nuper* strictly.

history of the war. It roused expectations of important events, and gave the narrative an air of authenticity. He was deceived by the seemingly safe assumption, that the cities which began the war, would of course be the same which concluded the alliance.

But if the list be derived from the treaty of Sp. Cassius, we need not be surprised to find Corniculum, Nomentum, and Tellena in it; though these places are said to have been reduced by the Romans long before. And so undoubtedly they were; since the dominion of the kings stretcht far beyond them. But they may have been ceded, partly to indemnify the Latins for the loss of Crustumerium, partly as the price of their assistance. Perhaps Circeii too came then for the first time into the possession of the Latins. This accordingly was a third change in the composition of the same number of towns: and thus on the revival of the alliance with Rome, toward the end of the fourth century, the Latin state was again enlarged and remodeled.

The passage in which the list is given, might easily lead one to suppose, that the Latin cities did not form one really united state, like the Achaeans; that they were not more firmly associated than the Dutch Provinces, which were also designated by their number, were by the Union of Utrecht, and the thirteen North American States by the old federation: and that, although their deputies met to deliberate, the final decision was still reserved for the particular towns: so that the connexion would in reality be no more than a permanent offensive and defensive alliance. It is the better worth while to investigate this matter because the states with which Rome came into conflict in Italy, were all composed of several distinct republics: and the uniformity in the main outlines of the constitutions of the Italian nations gives us a right to assume, that, if we can ascertain that of the Latins, it will teach us those of the rest, which must else remain an inscrutable secret.

The conclusions deducible from the blending of the Latin army into a uniform body with the Roman may not, it is true, be so generally applicable. But in the case of the Latins this is decisive evidence of the real unity of the state. For the purpose not only of preventing them from bringing separate legions into the field, but of placing every division of their troops under the orders of a Roman commander, Tarquin united every century of each people with one of the other into a maniple[35]; in which it follows of course that the Roman centurion led the *ordo*, and was the real captain: whereas, after the revival of the league in the year 391, the centuries were again united, but the command was taken by turns. This implies that the Latins were divided into classes, just like the Romans, that the same number of centuries went into the field from each class, and that a foot-soldier for every century was raised in the one state from each town, as in the other from each tribe. Such a constitution is inconceivable unless all the towns were united in the assembly of the classes. It would be ridiculous to imagine the citizens of each of the thirty divided in the same way, so that a century of the seniors would have numbered only one or two men.

The form of the national council however may be supposed to have been common to the Latins with the other Italian nations. On this head Dionysius seems purposely to express himself with ambiguity: for he calls the assembled counsellors *πρόβουλοι*[36], the term which

[35] This would have been a much simpler way of saying what Livy expresses stiffly and obscurely, I. 52: miscuit manipulos ex Latinis Romanisque, ut ex binis singulos faceret, binosque ex singulis. The classical passage on the most ancient flexible form of the legion, VIII. 8, shows that the maniple consisted of sixty men, and of two centuries; for it had two centurions.

[36] Τὰ ψηφισθέντα ὑπὸ τῶν προβούλων: V. 52. οἱ ἐγγραψάμενοι ταῦτα πρόβουλοι: V. 61. In both passages he is speaking of the Latins. Of the Samnite senate, the constitution of which he knew

Herodotus applies to deputies sent on a special mission by confederate cities[37]. It cannot however be inferred from this, that Dionysius conceived that the Latin delegates were confined to this footing, and bound to receive the instructions of their respective towns, and that these were as independent as the Ionian ones: for he uses the same word in speaking of the senate of Romulus[38]. It denoted the ordinary council, which met in oligarchal states for the dispach of everyday business, and prepared weightier matter for the decision of the great council[40]: and it is probable that the clearness with which some Roman author may have exprest himself, on the original relation between the senate and the houses, induced Dionysius to select the term on this occasion, though the transient insight thus communicated to him soon escaped him again. But the precision, which was probably wanting in his views no less than in his words, is supplied by Livy's account, that the Ten First of the Latins came with their pretor as envoys to Rome, before the breaking out of the great war[41]. So that the Latins

to be similar, he writes: *οἱ πρέσβεις—ἐλθόντες ἐπὶ τοὺς προβούλους τῶν Σαυνιτῶν*: exc. de leg. p. 739. c.

[37] Of the Ionian deputies, in VI. 7; of those assembled on the Isthmus, in VII. 172. It is not probable that he had any essential difference in his mind, when he elsewhere calls such ministers *ἀγγέλους*, V. 91: as Thucydides calls them *πρέσβεις*, I. 119.

[38] *Τὸ συνέδριον τῶν προβούλων*: II. 45.

[40] This is the notion we are led to form of their office by the way in which Aristotle mentions it: Politic. V. 14, 15. The great council could discuss no subjects but what they laid before it; as the houses could only deliberate on what was proposed by the senate: and since the senate itself was confined to such matters as the presiding magistrate submitted to it, Dionysius elsewhere not inaptly calls the consuls *προβούλους*, IV. 76. V. 1; as he does the two chiefs of the twenty tribunes in the second insurrection, XI. 44.

[41] Livy, VIII. 3: Decem principes Latinorum Romam evocaverunt. The term given to the fact by Roman vanity, that they were summoned to Rome, does not affect the argument.

had then a senate, of which the Ten First by virtue of their office were deputed on embassies[42], as the same body were by the Roman senate, and by those of the municipal towns and the colonies: and we are warranted in extending this notion to the earliest times by the highest authority, that of L. Cincius; who considered the Latin state subdued under the consulship of P. Decius, as one with that which attained to independence on the destruction of Alba[43]: though he certainly did not overlook the long period of calamity, during which its unity was dissolved.

These Ten First, like those in the Roman senate, were clearly the first persons in the same number of decuries[44]: and the reader can scarcely need to be reminded that each of these decuries represented a city in Latium, as it did a cury at Rome. The deputies may have been chosen by election, or summoned by virtue of their office. The latter supposition is favoured by an expression of Dionysius[45], and is more than probable in itself. The senates of the Latin cities consisted beyond a doubt each of a hundred men: as was the case at Rome originally, and in the colonies and municipal towns[46]. How essential the division into ten decuries was, is clear from the very name *decurions:* and it may be conjectured that the foreman of each of the ten

[42] By the senate to the seceders, Vol. I. note 1345; by the council of Ameria to Sylla, Cicero, pro Sex. Roscio, 9 (25); from the Latin colonies, Livy, XXIX. 15. On the Decemprimi see Noris, Cenotaph. Pis. I. p. 59, 60, and Otto, de aedilib. p. 149. ed. 2. The practice of sending them on embassies gave rise to that of assigning ten legates to the generals out of the senate.

[43] Festus, Praetor ad portam: on which more hereafter.

[44] Vol. I. p. 340.

[45] Ἥκειν εἰς τὴν—ἀγορὰν τοὺς εἰωθότας ὑπὲρ τοῦ κοινοῦ τῶν Λατίνων συνεδρεύειν. IV. 45.

[46] Cicero, adv. Rullum, II. 35 (96), and a Veientine inscription in Savigny's History of Roman Law, I. 2. note 153.

decuries in the senate of each town was deputed to the diet, whether ordinary or special; which would supply a further application of the principle of employing the Ten First on missions. Accordingly the Latin senate, like that of Rome in its complete state, must have consisted of three hundred members; the leading men of each of the little senates, who might with strict propriety be termed *principes Latinorum:* though I would not positively assert that Livy found this expression deliberately selected, and therefore used it, but without a distinct notion of its force[47]. It is also observable that Dionysius says of the Volscians, whose constitution he certainly conceived, with very good reason, to be exactly like the Latin, that they deputed the principal men of every city as embassadors[48]. Those ten Latin embassadors came each from a different city: his only mistake seems to be in speaking of all the cities, whereas it is most probable that in every case a part only had this honour. Like the curies and the plebeian tribes, the townships in all the Italian republics were assuredly distributed into classes originally differing in rank. Dionysius himself however, in using the expression I have quoted, seems in reality to have referred to the magistrates, the pretors, or dictators of the towns: at least in the only passage remaining, that appears to convey his opinion unequivocally, he mentions them and the people as assembling at the diet[49]. Now, though I am fully convinced that they did

[47] In the assembly convened by Tarquin, he speaks of the *principes* and *proceres* of the Latins: I. 50, 51: as in XXIX. 15 he calls the same persons *decem principes* and *primores.* In the council of the Acarnanians also he makes a distinction between the *magistratus* and the *principes*, XXXIII. 16, applying Roman terms to different relations.

[48] Ἐξ ἑκάστης πόλεως τοὺς ἐπιφανεστάτους ἑλόμενοι πρεσβευτάς. VIII. 9.

[49] Συνήεσαν ἐξ ἁπάσης πόλεως οἵ τε ἐν τοῖς τέλεσι καὶ πολὺς ἄλλος ὄχλος εἰς τὴν Ἐχετρανῶν πόλιν. VIII. 4.

not form the senate, I am far from denying that they too appeared at the diets; since they often accompanied the Ten First on embassies[50]: and it is certainly most probable that the magistrates of the whole commonwealth were chosen from among them. It may be impossible to guess what place they occupied, since they could not belong to the senate: but our ignorance on this point proves nothing.

The multitude, which in the passage above quoted is said to have flockt with the deputies to the diet at Ecetra, was not attracted by mere curiosity, or by the traffic of the fair. It went to exercise its soverainty: for without a general assembly and its sanction the decrees of the congress would have had no more force than those of the Roman senate on laws, war, and peace. Such a popular assembly was held in the confederations as well as in the united states of the Greeks: the Amphictyons had one as well as the Achaeans: and the general assemblies of the Italian commonwealths must have been constituted like those of the Greek. Every man doubtless might vote in them, who was qualified to do so as a burgess in his own town. As in the towns however the votes reckoned were not those of the individuals but of the phyles, without regarding how many persons or how few each phyle contained, so in the national assembly the votes were counted by towns. Had not this been the way of deciding, the inhabitants of any of the great towns, where the diet might chance to be held, would have carried every question against all who came from other quarters[51]. But if the vote of twenty

[50] Livy, VIII. 3. XXIX. 15. Cicero, II. in Verr. II. 67 (162), and III. 28 (68).

[51] As by the French law of elections of 1817 the elections were decided by the chief towns of the departments. That votes in the general assemblies of united states were taken in the manner here described may have been observed long ago. I do not mention it as pretending to teach something new, but because the remark here is

men from Dyme was equivalent to that of two thousand Corinthians or Argives, the general assembly was a representative one: it was merely requisite that a few should attend from the more distant towns. Thus at Rome the tribes of the remoter regions can never have been curtailed of their due share in the government. It is clear that, in the general assemblies of the Latins, the Volscians, and the Samnites, the votes must have been reckoned in the same way. Livy had a distinct conception that they held popular meetings, along with the sittings of the deputies; and a Latin *concilium* according to his view was an assemblage of a numerous body of the nation[52]. The *concilium* of the Hernican tribes was held in the circus of Anagnia[53]; a place only fitted for a concourse of thousands. In his fourth decad Livy always calls the general assemblies of the Greeks, *concilia*, where in Polybius, as is proved by the fragments, he uniformly found the word ἀγορὰ[54]: the very word used by Dionysius, who is so learned and careful in his

essential. The course of the proceedings on the dissolution of the alliance with Philip (Livy, XXXII. 20-23) makes the relation among all the parties clear.

[52] Livy, I. 51. Confestim Latinorum *concilium magno cum tumultu* advocatur: it then proceeds without delay to recognize the soverainty of the Roman King.

[53] Concilium populorum omnium: IX. 42.

[54] The notion that ἀγορὰ in these passages merely means the βουλή, is a great mistake, which ought to have been prevented by the acknowledged repeated occurrence of the terms, ὄχλος, πλῆθος, and πολλοί. The general word for the national assemblies of the Achaeans is σύνοδος. They had two at stated times of the year, and these were called ἀγοραί: one especially summoned (*concilium indictum*) was termed σύγκλητος. The latter, as may certainly be inferred from the expressions of Polybius, XXIX. 9, 6, were not always convened from the whole body of citizens: sometimes only the great council was called to them: but then of course it could not exercise the powers of the whole people.

nomenclature, for the assemblies of the Latins[55]; without implying that they met only for a fair.

So long as the Latins were a free state, they held their general assembly at the spring and grove of Ferentina: which are very rightly supposed to be the same with the spring and wood in the valley below Marino; though this spot is separated by the Alban lake from Montecavo, the foot of which is mentioned as the place of meeting[56]. Perhaps there was a temple here, that served as a council-chamber for the senate, as was the case at the Amphictyonic assemblies: though it is equally possible that, like several German councils, courts, and estates, it transacted business in the open air[57]. Dionysius always calls this place of meeting Ferentinum; but certainly not from confounding it with the Hernican town of that name. There may have been a market-town here when Latium was independent, owing its rise to the fairs which were connected with such assemblies, as they were with the resorts of pilgrims[58]. Indeed the story of the stratagem by which Tarquinius gained credit for his false charge against Turnus Herdonius, seems to imply that the deputies spent the night in dwelling-houses.

According to the principles of the constitution the several cities were merely parts of the whole state, as the North American states are of the federal union. It is highly probable that the common law of the Latin nation, which prevailed in the Latin colonies till the passing of the Julian law[59], was in force at a very early

[55] III. 34, 51, and in many other places. See Sylburg's Greek index.

[56] By Festus, Praetor ad portam.

[57] As the men of Ditmarsh met on the moor, the Frisians at Upstalsboom: nay, as I learn from my friend Pertz, the estates of Lüneburg did so even after the thirty-years war.

[58] The merchants brought word of the resolutions taken in the assembly of the Etruscan states at the temple of Voltumna: Livy, VI. 2.

[59] Gellius, IV. 4.

period, and that the individual towns had no power of altering it by local enactments. The constitution that united them was too binding to allow us to describe Latium as a confederation. But since a fortified town, as they all no doubt were, has in fact an independent existence, and each of them, so far as it was not restrained by the general ordinances, made and administered its own laws, they had temptations and opportunities to exceed their powers with respect to the commonwealth of Latium, such as could not occur to a tribe in that of Rome.

It may I think be deemed certain that the alliance with Rome was concluded by a dictator, as chief magistrate; since we read of a Latin dictator during the period when Pometia belonged to Latium[60]. The opinion deriving this office from Alba, its appearing in very remote times at Tusculum, its continuing for five centuries later at Lanuvium, are proofs of its Latin origin. Now, as the senate of the whole state was formed out of those of the thirty cities, so we may infer from analogy that the dictator of one of these became dictator over the commonwealth of Latium; just as one of the kings of the twelve Etruscan cities was acknowledged as head of the whole nation. It would be lost labour to inquire whether all the towns, or only some of them, were entitled to confer this office, and whether it was bestowed by election or in rotation.

Against the explicit testimony of Cato just referred to, no weight can be attacht to the account, that, after the destruction of Alba, the Latins, when they had resolved to resist the Roman king, elected two generals, whom the Latin author followed by Dionysius must have termed pretors[61]. Their names were mentioned, just as we find those of the Roman magistrates who first filled

[60] Egerius Laevius: Cato, quoted by Priscian, IV. 4 (21). See Vol. I. p. 564.

[61] Dionysius, III. 34.

a new office, or one that had been raised to new importance. I have as little faith in a statement of this kind concerning the times of Tullus Hostilius with regard to Latium as to Rome. The persons named may actually have been the first pretors of the nation, though not till many generations later; when the Latins restored their state after the Gallic invasion. After that, as we see in the history of their destruction, they certainly had two pretors. The institution of two consuls at Rome was only occasioned in the first instance by the existence of the two orders in the state: it was retained from other causes, after the original principle ceast to operate, and, when every effort was made to prevent its taking effect. When the Latins freed themselves from the yoke of Alba, they had no reason for introducing so hazardous an institution: but in aftertimes they may have copied the example of the Romans, as the Italian states did in the Marsian confederacy.

So long as Latium had a dictator, he alone could offer the sacrifice on the Alban mount, and preside at the Latin Holidays[62], as the Alban dictator had done before. He sacrificed in behalf of the Romans likewise; as they did in the temple of Diana on the Aventine for themselves and for the Latins[63]. Of course Tarquinius

[62] The proper name of this festival was Latiar: Macrobius, Sat. I. 16.

[63] Vol. I. pp. 367, 368. Dionysius, IV. 26. Livy, I. 45. We must not allow ourselves to be misled, though both the historians consider the erection of this temple as a mark that Rome was the acknowledged head of the Latin people: which indeed is also implied in the legend about the prodigious ox. General analogy infers that the Romans and Latins, so long as they were allies on an equal footing, would meet annually at each of the common sanctuaries; as the Amphictyons held one of their sessions at Delphi, one at Thermopylæ: meetings held twice a year were usual with the Greeks, and were retained by the Achaeans. After the destruction of the Latin state indeed, if not before, the temple of Diana became entirely Roman: the sacrifice for the Latins had ceast.

assumed the presidency on the Alban mount; as it was subsequently exercised by the chief magistrates of Rome after the destruction of the Latin republic, and probably before, during the seventy years when it was in a state of dissolution. In like manner the yearly sacrifice to the Penates at Lavinium, which must originally have been offered in the name of the thirty cities, was no doubt also celebrated at first by the Alban, and afterward by the Latin dictator. But the opinion that the last Tarquinius or his father instituted the festival, is quite erroneous. Its antiquity is proved to have been far higher by the statement that the towns of the Priscans and the Latins formerly received their share of the sacrifice on the Alban mount, along with the Albans and the thirty towns of the Alban commonwealth[64]; a statement which the list of those towns proves to be authentic, and derived from very ancient records. Some of the Roman antiquaries too were aware of this high antiquity of the festival[65]. It is true that Tarquinius converted it into a Roman one; and he probably threw it open to a larger body, and thus transformed the national worship of the Latins into the means of hallowing and cementing a union between the states. The three allied republics had each its own place of meeting; at Rome, at the spring of Ferentina, and at Anagnia. That the sittings of their diets were connected with the Latin festival, seems to be proved by the usage, that the consuls never took the field until after it was solemnized; and by its variableness, which implies that it was regulated by special proclamation.

[64] Pliny, III. 9: Praeterea fuere in Latio clara oppida—et cum his carnem in monte Albano soliti accipere populi Albenses.

[65] The Scholiast publisht by Mai on the speech pro Plancio, 9: Alii a L. Tarquinio Prisco—he at all events has no business here—(institutas ferunt):—alii a Latinis Priscis; atque inter hos ipsos (de) causa sacrificii non convenit. As the latter considered the swinging puppets a distinguishing rite of the festival, and Cornificius in

Like the Greek festivals it was attended by a sacred truce[66]. It lasted six days[67], one for each decury of the Albian and Latin towns; just as the three Roman tribes kept three holidays in the great games, until a fourth was added for the plebs*. The accession of the Romans restored the number of the Latin Holidays, or at least its propriety: but the establishment of the fourth holiday at Rome would scarcely add to the length of the Latin festival. It may indeed have done so indirectly some years later: but the notion that the fourth day, as originally instituted, was an addition to the Latin Holidays†, is a palpable mistake; as is proved by Livy's words, and by the fact that in 383 Latium was quite independent. And it is equally certain that this festival is confounded with the Roman games, when it is said that Tarquinius only appointed one day, and that a second was added after his banishment, and a third after the reconciliation with the commonalty‡. That this was not the case, is clear from the authorities cited above for the antiquity and duration of the Latin Holidays. Nor did the changes in the Roman constitution affect the Latins. Even with regard to the Roman games however, it cannot be imagined that down to the end of the monarchy the Ramnes alone enjoyed the honour of a

Festus under *Oscillum*, does the same, he also is one of those who recognized its Latin origin.

[66] Dionysius, IV. 49. Macrobius, Sat. I. 16, says that the Romans did not give battle during those days.

[67] Festus, Oscillum: Itaque per sex eos dies feriatos requirere eum: then follows, per eos dies feriarum. In the Scholiast quoted in note 65 the true reading certainly is: itaque *ipsi sex* diebus oscillare instituerunt, instead of *ipsis diebus*.

* Livy, VI. 42. On the throwing open of the consulship to the plebs, the senate decreed *ut ludi maximi fierent, et dies unus ad triduum adjiceretur*.

† It is so called by Plutarch, Camill. c. XLII.

‡ Dionysius, VI. 95.

day's festival, and that it was extended to the other two tribes on occasions in which they were not immediately concerned. The account given by Dionysius seems to be nothing more than a misunderstanding of a statement, that on both these occasions the games were prolonged a day, as was frequently the case at times of public thanksgivings and fasts[68].

Up this same Alban mount, to the temple of Jupiter Latiaris, which was for Alba what the Capitol was for Rome, the dictators of Alba and Latium undoubtedly led their legions when they returned in triumph. This solemnity, in which the triumphant generals appeared in royal robes, was unquestionably derived from the period of the monarchy: nor would the Latin commanders deem themselves inferior to the Roman, or bear themselves less proudly, when they were not subject to the imperium of the latter, or shew less gratitude to the gods. Indeed their triumph was preserved in that which Roman generals solemnized on the Alban mount: for that the first who assumed this honour* was renewing an earlier usage, is at least far more probable, than that he should have ventured to assume a distinction of his own devising. He triumpht here, not properly as Roman consul, but as commander of the Latin cohorts, belonging partly to the towns of ancient Latium, partly to the colonies which sprang out of that state after it was broken up, and which represented it. At this distance from Rome he was secured from interruption by his imperium: and the honour was bestowed on him by the acclamation of the Latins, seconded by that of the Italian allies, and perhaps

[68] Livy. XXV. 2. XXVII. 6. 21, and so on. Sometimes two, three, or four days were added. For *ter* and *quater* mean that there were so many additional days, as *semel*, XXVII. 36, that there was one; not that the whole four-day festival was repeated so many times over.

* C. Papirius Maso: see Pliny, XV. 38; Valerius Maximus, III. 6. 5.

expressing itself by the otherwise inexplicable salutation of *imperator**, given to generals after a victory; a salutation which, at least after the Latins and their allies had all received the freedom of the city, was used by the Roman legions; as they may have joined in it previously, when its origin was forgotten. In early times, if fortune was propitious, Latin triumphs might be celebrated, for wars conducted by Latin generals under their own auspices, and even by virtue of their equality in the league, with Roman legions under their command.

* See Vol. I. p. 107.

THE LEAGUE WITH THE LATINS.

This equality fully explains why Sp. Cassius alone ratified the league with the Latins at Rome, a fact which has furnisht room for an utterly groundless inference, adopted by Livy[69]. His collegue was absent, because he was taking the same oath among the Latins; and his name would be recorded on the tablet which they set up.

The preservation of the Roman document down to the age of Macer, who undoubtedly read it himself, perfectly authenticates the contents reported by Dionysius; though long before he came to Rome it had disappeared: and we may be assured that he followed his authors literally here; because elsewhere he is misled by the inveterate Roman prejudices to form a totally different conception of the relation of the Latins to Rome[70]. So that

[69] He is not chargeable with having invented it; for we find the same supposition, that Postumus Cominius was engaged in the campaign against the Antiates, in Dionysius, VI. 91. From Livy we learn that this was a mere conjecture, bolstered up by the argument that he was absent from Rome at the time: a conjecture which was occasioned by the foisting of the legend of Coriolanus into history. See the text to note 215.

[70] Subsequently he so entirely forgot this document, that in the story of Coriolanus he does not hesitate to write, that the senate in its embarrassment gave the Latins leave to raise an army of their own, and to appoint its general, which had been forbidden in the treaty of alliance (VIII. 15). Now such is the very answer given in 291 (Livy, III. 6); and when referred to that date, it is probably genuine. This justifies the ancient story, but not those who allowed it

the treaty contained the following terms, which were ratified by the sacrifice[71]. There shall be peace between the Romans and the Latins so long as heaven and earth shall keep their place. Neither state shall war against the other, or instigate forein powers to do so; or grant a passage through its territory to forein armies against its ally: but when either suffers damage or vexation, the other shall loyally render it protection, help, and succour. The booty and everything gained in a joint war shall be shared equally[72]. Private suits shall be decided within ten days, in the place where the cause of litigation arose. No article shall be crazed from this treaty, or added to it, except with the common consent of the Romans and the commonwealth of Latium.

Our report of the treaty indeed is certainly not so full as it is accurate. We miss one provision which was indispensable, to wit, how public quarrels between the two republics, or complaints of individuals against either state, whether of a Roman against a Latin town, or of a Latin town against a Roman commonwealth, were to be brought forward and decided. Nor is it specified which party was to command in joint expeditions; whether that

to stand, when carried so far back, without suspecting that the state of affairs had changed between 266 and 291. Livy, who passes over the contents of the treaty, is more excusable in persuading himself that the Latins were even prohibited from defending themselves in case of an attack: VIII. 4. But see below, p. 50.

[71] Dionysius, VI. 95.

[72] This too escaped the recollection of Dionysius in the sequel, where he makes the questors say, that Cassius had first granted one-third of the booty to the Latins, and then a second to the Hernicans: VIII. 77. All such mistakes are to be imputed to annalists whom Dionysius scrupled to abandon: and they were thinking of the undoubted fact, that before the last Latin war the Latins received a third (Pliny, XXXIV. 11: Prisci Latini quibus ex foedere tertias praedae populus Romanus praestabat); without reflecting that, when the Hernicans joined the confederacy, the share of the former parties would of course sink from half to a third.

which sent the summons, or each in turn every other year[73]. For these are the only alternatives: it cannot be imagined that the Latins should have had an equal share in the spoils of war, and none in the command of the army.

The conclusion, to which we are led from the nature of the relation, is confirmed, as often happens, by direct testimony. Scarcely a hundred and fifty years after the destruction of the Latin state, L. Cincius wrote[74], that after the fall of Alba, so long as Latium was independent, in the year when the Romans appointed the general, the Latin towns sent deputies to observe the auspices on the Capitol; and that the Latin army waiting at the gate saluted the person elected with the name of pretor, as soon as it heard that his election was confirmed by the augury. The referring of this state of things to the whole period from the fall of Alba down to the final extinction of the Latin commonwealth in 412, and without any exception, either for the period when Latium was in a state of dependence under Tarquinius and the earliest consuls, or for that when such towns as were still unconquered took shelter under the protection of the Romans,—this is probably an oversight of Festus, if not of Verrius himself: although even Cincius may not have thought it necessary to guard himself against censure by subjoining a qualification which was then familiar to every well-informed reader. For times like those which followed the years 261 and 392, his statement is a satisfactory proof that Rome had not always the supreme command of the combined forces; so that the Roman legions must at times have been under the orders of the Latin dictator as pretor of the confederacy: and the most probable conjecture is, that the command alternated yearly.

[73] A clew to guide us in conjecturing the points that must have been noticed here, is afforded by the treaty of the Athenians with the Argives and their allies, in Thucydides, v. 47.

[74] Festus, Praetor ad portam.

The combination of the centuries into maniples might have continued during the period we are now considering, as it subsisted after 392, if the command of the *ordo* had shifted annually. But that this was not the case, that the Latin legion at this time was kept apart, must be considered as an attested fact; unless we reject a statement, which, though it belongs to a highly overcharged description, seems to be of considerable antiquity[75]. Our information concerning this period is so scanty, that little stress can be laid on the rare occurrence of any allusion to a junction between the forces of the two states: in itself however it is credible enough that they may only have been bound to aid each other in defensive wars.

The fruits of victory to be shared between the allies consisted not merely of money and movables, which the soldiers were bound by the military oath to deliver in to the questor, and which he put up to auction, but also of land[76]. Latium at the time of its destruction had a domain, which the conquerors seized: and so there must always have been an *ager Latinus*, to which everything capable of being conveniently held in common was annext. This domain lay in scattered parcels[77]. In cases admitting

[75] Dionysius, IX. 5: *Δύο ἑκάτερος ἄγων Ῥωμαίων τάγματα—οὐκ ἐλάττω δὲ τ αὐτης χεῖρα τὴν ὑπὸ τῶν ἀποίκων τε καὶ ὑπηκόων ἀποσταλεῖσαν. ἀφίκετο δὲ αὐτοῖς παρὰ τοῦ Λατίνων τε καὶ Ἑρνίκων ἔθνους διπλάσιον τοῦ κληθέντος ἐπικουρικοῦ.* At this time four legions must have been 12000 men: add to this 12000 from the colonies and subject towns, and 24000 for the double contingent of each allied state, and the whole assembled force will be 72000 men. The legend peeps through in this wantoning with typical numbers, which it is fond of multiplying enormously: its antiquity is proved by the mention of the troops from the subject towns, the remembrance of which cannot long have survived the twelve tables. Livy too says, III. 5: Cohortes Latinae Hernicaeque remissae domos.

[76] *Γῆς τε καὶ λείας μερίς*, in the similar treaty with the Hernicans: Dionysius, VIII. 77.

[77] One of these was the Ager Latinus between Rome and Fidenae, which was separated by the Tiber from the Vatican district. Pliny, III. 9.

of an actual partition, the confederates would forthwith set out their respective shares: for the promiscuous occupation of the same district by the citizens of both states would have led to confusion and variance. A like distribution may have been adopted in the case of small towns: and when the inhabitants of larger ones were allowed to retain possession of their city and its territory, subject to a tax, this would be levied on the common account, and divided equally. But when the object was to secure a fortified place for the league, the inhabitants of which aimed at shaking off the yoke, and when a colony was planted there for that purpose, the allied states took equal shares in it. Of this the Roman books have recorded an example in the case of Antium, undoubtedly because it was the first colony composed of Romans, Latins, and Hernicans[78]. What name was given to a colony thus bound by the ties of blood and duty to the whole confederacy, we have no means of divining. Only the negative is certain, that it cannot have borne that, which subsequently became so important, of a Latin one: there was nothing that could give rise to such a distinction. Its character and constitution however may be made out with precision and certainty.

[78] The statement in Dionysius, IX. 59, is only distorted by a misplaced attempt to account for the fact, and by the fixt idea of Rome's supremacy: *'Ολίγων ἀπογραψαμένων ἔδοξε τῇ βουλῇ, ἐπειδὴ οὐκ ἀξιόχρεως ἦ ὁ ἀπόστολος, ἐπιτρέψαι Λατίνων τε καὶ Ἑρνίκων τοῖς βουλομένοις τῆς ἀποικίας μετέχειν.*

OF THE COLONIES.

The colonies with which the Romans strengthened their empire were not of a kind peculiar to them. We read of Alban, Volscian, Sabellian colonies; which, as well as even the Etruscan ones, there can be no doubt, were of exactly the same nature. If our information were somewhat more copious, all these would range under one general head as Italian colonies. To avoid the appearance of an arbitrary assumption, I will speak only of the Roman, and of the contrast between them and the Greek.

The latter were in general newly built towns[79]: or, if the colonists settled in cities already founded, the old population was mostly exterminated: in the surrounding territory it survived, but in bondage; from which condition it generally rose in course of time to that of a commonalty. They were planted at a distance from the parent state, usually by persons who emigrated to escape from commotions and civil feuds, and not under the

[79] Even the most important Dorian cities in the Peloponnesus were so. Does Sparta really form an exception? As to most of those within the compass of the Argolis conquered by Temenus, my position will not be disputed: but the case was assuredly the same with the capital Argos itself. The Argives were unwilling to allow that it had sprung up in later times, by the side of old Mycenae; and so it was said to have subsisted before, and that too within four or five miles of the capital of the king who ruled over many islands and all Argos: and it was assigned to a dynasty which was spoken of in tradition as ruling over the land of Argos.

direction of the government at home. Or, if a colony went forth in peace, and with the blessing of the parent state, and the latter retained honorary privileges, still the colony from the beginning was free and independent, even when founded to serve as a safe mart for commerce. The totally opposite character of the Roman colonies is described in a definition, which is certainly very ancient, and merely needs some explanation and addition[80]. A colony, it is said, is a company of people, led at the same time, and in one body, to a certain place furnisht with dwellings, in order to live there under certain legal conditions: they may either be citizens or dependents, sent out to form a commonwealth, according to a decree of their state, or of that to which they are subject; but not such persons as have seceded during a time of civil dissension. Besides this last class, the definition excludes gradual settlements, such as often grow up into market-towns from the notion of a colony, and indeed all such as did not occupy a city already standing. This qualification however had ceast to be observed even at the time of the colonizing of Cisalpine Gaul; where there were scarcely any towns properly so called; and where the Roman setlers kept aloof from a population which was quite forein and hostile to them, and with which

[80] Servius, on Aen. I. 12. Sane veteres *colonias* ita definiunt. *Colonia* est coetus eorum hominum qui universi deducti sunt in locum certum aedificiis munitum, quem certo jure obtinerent. Alii: *colonia*—dicta est a *colendo:* est autem pars civium aut sociorum missa ubi rem publicam habeant ex consensu suae civitatis, aut publico ejus populi unde profecti sunt consilio. Hae autem coloniae sunt quae ex consensu publico, non ex secessione sunt conditae. *Coetus* is *κοινωνία*, a company: the word occurs frequently in Cicero, de re p., being undoubtedly taken from the phraseology of the jurists: the above definition is at least not later than his times, and may have appeared in that work. The use of *consensus* for a decree, though very rare, is also not uncommon with him. *Munitus*, which Cicero wrote *moenitus*, in the old way, refers not to the walls, but to buildings within the city, which were properly denoted by *moenia:* Dividimus muros, et *moenia* pandimus urbis.

they could not blend for several generations: and there may have been an exception or two in Italy itself[81]. There however the rule was in general steadily observed; the colonists being mostly settled as garrisons in fortified towns taken from the enemy, and having assignments of land, instead of pay and provisions[82]. The old inhabitants were not ejected; nor was the whole mass of landed property confiscated by the ruling state. Several stories, in which the ancient usage is exprest, however devoid of historical truth, prove clearly that, in the case of a genuine Roman colony, the general rule was, that a third of the territory of the town it occupied should be confiscated and allotted to it, and that the rest was restored to the former owners[83]. Of course this partition extended to the domain; unless this, as the *publicum*, past entire into the hands of the new body, which represented the populus of the place: and assuredly what was left to the old inhabitants was not enjoyed by them free from burthens; though the confiscation of the third might serve as a redemption of the land-tax. A state of servitude it was after all, and doubly galling, because endured in a home that had once been free. Accordingly the old citizens often attempted to expell their lords, and, not satisfied with liberating themselves, to quench their hatred with blood[84]. These insurrections, which occur frequently

[81] For instance Interamna on the Liris.

[82] At Fidenae (Dionysius, II. 53) *φυλακὴν ἐν τῇ πόλει τριακοσίων ἀνδρῶν καταλιπὼν, τῆς τε χώρας μοῖραν ἀποτεμόμενος ἣν τοῖς σφετέροις διεῖλεν, ἄποικον ἐποίησε Ῥωμαίων.* At Cameria, in the same passage, it is called *φρουρά.* In VI. 34, *οἱ ἐν Κρουστομερίᾳ φρουροὶ* are the colonists.

[83] Such is the account given of Caenina and Antemnae in Dionysius, II. 35; of Cameria, II. 50: compare 54. The law-books had transferred their statements to the age of Romulus. At Cameria a second third is then said to have been confiscated as the penalty of an insurrection: but it was no doubt the share of the Latins.

[84] So at Sora: Livy, IX. 23. This accounts also for the murder of the envoys at Fidenae: IV. 17.

in early Roman history, are absurdly related as revolts of the colonies[85]. For the name *colonia* can only be applied strictly to the body of colonists[86]; who depended on the parent state for their preservation, and among whom there cannot have been more than a very few traitors. When one of these places revolted, the colony must always have been expelled. The meaning of the term however was suitably modified, when the colonists and old inhabitants were blended into one civic corporation; as at Rome the burgesses and the commonalty were into a united Roman populus. But this could not happen until the change had taken place at Rome: and so long as the patricians would not recognize the civil validity of mixt marriages, they can have allowed no *connubium*, and scarcely so much as a *commercium* with the old inhabitants in the colonies, founded as they were according to the forms of their ancient law. In those times the ruling body derived no advantage from these dependents, beyond what subjects, however hostilely disposed and bent on revolt, must afford to a government which has the means of keeping them under. But when Rome had attained to domestic peace, an entirely opposite spirit spread likewise into the legislation of the colonies. The colonists were Romans, Latins, or Italians: all who might have taken part in the first planting, were at liberty to settle in the colonies as they chose: and assuredly nothing now prevented the old inhabitants and their descendants from recovering the civic franchise in the cities of their forefathers. These were the Latin colonies, which reacht such a brilliant eminence under the soverainty of Rome: and though not a few of the later military ones, having been planned with happy foresight, have continued to

[85] In the passage just quoted, of Fidenae: of Antium, in Livy, III. 4; Dionysius, X. 20; where the express assertion that the colonists took part in the revolt is unpardonable: of Velitrae, in Livy, VI. 13. 21. VIII. 3. 14.

[86] According to the definition in note 80.

flourish to this day, still these are more especially deserving of the praise which Machiavel bestows on the Roman colonies,—that by them the empire was consolidated, the decay of population checkt, and the unity of the nation and of the language diffused. These however must be treated of in a future page, when they begin to make a figure in history. In their capacity of garrisons, colonies served not only to maintain conquests, but also to defend subject towns, which, whether from loss of inhabitants or naturally, were too weak to repell an advancing enemy[87]. In such case they were solicited as a benefit; as they were even by colonial towns already subsisting, when their position was so dangerous that their safety required a numerous population[88], or when, their numbers having begun to decline, the burthens imposed by the principle of their institution prest too heavily upon them. Even if they had remonstrated against such a measure, Rome might have enforced it, when her interest seemed likely to suffer: though the sending new colonists not only involved the assignment of vacant allotments, but, as results from the principle of the agrarian law, a general repartition, and a retrenchment of such property as had been acquired beyond the original measure.

This power was derived from the supremacy of the parent state; to which the Roman colonies, like sons in a Roman family, even after they had grown to maturity, continued unalterably subject: whereas those of Greece were abandoned to their fate, but at the same time to freedom. This essential dependence of the colonies, as well as their being settled to serve as garrisons, is left out in the definition.

In another ancient passage it is observed, that the

[87] Such was the case at Velitrae, Dionysius, VII. 13; at Norba, Livy, II. 34; at Ardea, IV. 11: ut coloni praesidii causa adversus Volscos scriberentur.

[88] Livy, XXXVII. 46.

colonies were miniature likenesses of the Roman people[89]: which is perfectly correct as to those of the earliest period, and those only. At Rome, from the time of the most ancient allotment[90], every cury had a separate tract. This was a century of two hundred jugers, markt out by formal metes and bounds. It was assumed that each cury contained a hundred householders[91], and that each of these received two jugers, that is, one of arable and one of plantation, without reckoning the enjoyment of the common domain[92]. In the colonies of this ancient class likewise the setlers received two jugers of ploughland: in one case it is expressly mentioned[93]; and there is no room to doubt that this was the universal standard. The number of the colonists was three hundred[94]: thus the allotments of a hundred of these also would form a distinct tract, or century; which however answered to a third part of their body, while at Rome it answered to the thirtieth. What was here the measure of the cury was in the copy that of the tribe: the hundred in the latter was in the former a tithing[95]. The colonists were

[89] Effigies parvae simulacraque populi Romani: Gellius, XVI. 13.

[90] Romulus ἑκάστῃ φράτρᾳ κλῆρον ἀπέδωκεν ἕνα: Dionysius, II. 7.

[91] That is, the original Rome of the Ramnes contained a thousand homesteads: Plutarch, Romul. c. IX.

[92] Such a hereditament, *heredium*, was a garden, as Pliny observes, XIV. 19: in XII. tabulis nusquam nominatur *villa*, semper in significatione ea *hortus;* in *horti* vero *heredium*. Even with the most industrious cultivation it could not suffice to maintain a wife and children, without the use of the common. On the centuries of land, so called from the number of the proprietors, and on the *heredia*, the important passages may be found in Gessner and Forcellini.

[93] That of Anxur: Livy, VIII. 21.

[94] This is related of Caenina, Antemnae, and Fidenae, in Dionysius, II. 35. 53; and is historically recorded, so late as the year 421, and even 551 and 554, with regard to maritime colonies of Roman citizens founded according to the old law.

[95] It is a gross mistake to be sure to talk of three hundred colonists, when the Ramnes were the only citizens. Such anachronisms

the populus, the old inhabitants the commonalty: and the former was represented by a senate, perhaps of not more than thirty members. Just such a miniature of the ruling republic in a subject country, with a purpose like that of the Roman colonies, was that of the Venetians in Candia; where we even find a doge. Similar, if not exactly the same, seem to have been the settlements of the Franks in Asia during the crusades. Now as settlements from different cities subsisted within the walls of Acre, perfectly independent and forein to each other, so at Antium perhaps the three colonies of the allied states may not have coalesced like so many tribes. And I suspect that Rome and Quirium were similar colonies of the Albans and Sabines, allied on a footing of equality; and that the Luceres were one of a people standing in a dependent alliance, or of a subjugated race.

It is stated, that the inhabitants of such colonies obtained the Roman franchise: and this is mentioned, not only in the fictitious narratives professing to belong to the age of Romulus[96], but likewise in the cases of Antium and Velitrae[97]. This sounds incredible, with regard to subjects who were kept in obedience by force, and not without struggles, and who probably experienced harsh restraints in their immediate home. The evidence however is irresistible: and there was a stage of this franchise, not too high in honour and advantage to be granted to a subject commonalty; far below that enjoyed under the same name by the Latins.

have often befallen those who have given historical statements of the origin of particular institutions.

[96] Dionysius, II. 35, 50. [97] Livy, VIII. 14.

ON THE RIGHTS OF ISOPOLITY AND MUNICIPIUM.

THE fact that the Latins by virtue of the league enjoyed the privilege of isopolity, has likewise been preserved by Dionysius alone[98]. If he had considered this as no more than the renewal of a previous mutual relation, it would not be very surprising that nothing should appear about it in the articles of the treaty which he has recorded. But the omission is remarkable in so circumspect a writer; because he regards this isopolity as a new and high privilege conferred on the Latins. I am inclined to suspect that he did not find and insert his extract from the original instrument, till after he had written the passages just quoted, and the others which even contradict it[99]; nay till after he had publisht his work[100]; and moreover that either nothing was said about isopolity in the few articles selected, out of a great number, by the Latin annalist from whom he took his account, because it was implied in the notion of a league between

[98] Dionysius says of Cassius and this treaty (VIII. 70), *τῆς ἰσοπολιτείας μεταδοὺς* (to the Latins), and, 77, *Λατίνοις —οἷς ἀπέχρη πολιτείας κοινῆς ἀξιωθῆναι* (of this hereafter)—(*τὴν*) *ἰσοπολιτείαν ἐχαρίσατο.* The same thing is stated in VII. 53, and, as a proposal made during the sedition, in VI. 63. He even calls the Hernicans, who were on the same footing, *πολῖται*: VIII. 69. 77.

[99] The whole passage in VI. 95, from *ἦν δὲ τὰ γραφέντα*, to *ὁμόσαντες καθ' ἱερῶν*, would not be mist if it were taken away.

[100] See note 70.

equals; or that the annalist had retained the old law-term, which the Greek historian could not understand. In the other passages likewise he was treading in the footsteps of an annalist who had written in plain terms of the granting of certain civic rights: he was far too conscientious to interpolate a clause in his report of the treaty, for the purpose of justifying his assertions: and he may have neglected to correct the statements in other places, which might now have struck him as erroneous.

What this learned historian, who even in his expressions is extremely careful, understood by the word *ἰσοπολιτεία*, may be clearly collected from the treaties of alliance between certain Cretan towns, which have been preserved in inscriptions. These belong to a comparatively late period, not far from his time: and at Athens, Rhodes, and other free cities, this kind of franchise must have subsisted when he wrote, and even long after[101], as well for each other, as in favour of subject towns in the Roman provinces; so that he could not be mistaken about it.

Isopolity, as it appears in these documents, was a relation entered into by treaty between two perfectly equal and independent cities, mutually securing all those privileges to their citizens which a resident alien could not exercise at all, or only through the mediation of a guardian; the right of intermarriage, of purchasing landed property, of making contracts of every kind, of suing and being sued in person, of being exempted from imposts where citizens were so; and also of partaking in sacrifices and festivals. But though we find this participation granted for all things divine and human, we are not to construe it as if it had extended even to the

[101] The researches by which the following results have been obtained, will be detailed in a paper intended for the Berlin academy: but I should wish the reader to have at hand the treaty between Hierapytna and Priansium, in Reinesius, VII. 22. p. 491.

assembly of the people. The κόσμος is allowed to enter the senatehouse of the allied city, that he may be able to propound the business of his own state there: and as a mark of honour he has a seat in the popular assembly, by the side of the magistracy, but without a vote. No place however is assigned for private citizens in that assembly: for it would inevitably have been abused. The aim of the cities is to avoid war and violence, and to submit their differences to impartial arbitrators: but they and their citizens remain completely distinct. This is an essential point. In particular cases the mutual concessions may have been more or less restricted according to circumstances.

The privileges enjoyed by the freemen of a city in virtue of its isopolity were also conferred on individuals, in states with which there was no such tie, by the relation of *προξενία*, which had likewise a variety of shades. Such persons must have enjoyed the same honorary rights as the isopolites, and appear so far to have had the advantage of the metics who had obtained isotely. They who had received the latter privilege, whether domiciliated aliens or freedmen, were releast from the civil disabilities of the other aliens, could perform valid acts in their own person, and purchase land in their own name. Moreover in most cases beyond doubt they had also the right of intermarrying; though on this head some states were unquestionably more rigid than others. Finally the inhabitants of cantons connected by the bond of sympolity (συμπολιτεία), as dependents, with a powerful state, like the subjects of the Aetolians, or as Eleutherae and Oropus were with Athens, must have possest similar franchises in the country which admitted them into its body politic.

The Greeks, with their power of conceiving and expressing every abstract notion, cannot have been destitute of a general name for these various classes of privileged aliens, which, though differing in their origin, in

the greater states exercised degrees of legal capacity scarcely distinguishable one beside the other: and it may be presumed that this name was ὁμότιμοι or ἰσότιμοι. Usage however seems mostly to have bestowed this general meaning on the term ἰσοτελεῖς, which class, more especially at Athens, must have been incomparably the most numerous: though, on the other hand, where relations of isopolity were common and there were few resident aliens, as in the Cretan towns, the general name may have been περίοικοι[102].

The isotelic class included men not inferior to any of the freemen in respectability and weight, and who are remembered by posterity as ornaments of the cities they chose for their abode. Such was the orator Lysias, who in his love of Athens equaled her best citizens; though Timaeus, who himself lived at Athens half a century with at least no higher franchise, with his usual malignity denied him the honour of being called an Athenian. He claimed him for Syracuse, his original country, says Cicero, as though by the law of Crassus and Scaevola: but this was unfair; for he was born and died at Athens, and discharged all the duties of a citizen there[3].

By this law of Crassus and Scaevola, the Italian states were empowered to call home those of their people who, leaving the remainder more sorely prest by the common burthens, had taken advantage of their privilege of enrolling themselves among the Romans: which privilege led a historian, no less accurate in his expressions than in his knowledge[4], to call their towns isopolitan. Cicero's

[102] In the decrees of one and the same people isotely is granted to one proxenus, isopolity to another, where no difference can have been intended. Pollux takes the two words for synonymous: and Dionysius, IV. 22, writes that Servius granted isopolity to the freedmen.

[3] Brutus, 16 (63). Certe Athenis est et natus et mortuus, et *functus omni civium munere.*

[4] Posidonius: whose spirit and words are as certainly discernible in Appian's excellent account of the troubles in the time of the

allusion therefore shews that he considered Lysias an isopolite; notwithstanding that no such relation existed between Athens and Syracuse. The words which he uses in speaking of the life Lysias had led, denote an ἰσοτελής in the widest sense[105]. For *munus* properly signified a duty which a citizen was bound to discharge, whether by personal or pecuniary services[6]: and *municeps* was the opposite of *immunis*, which designated a person exempt from such burthens, as *vesticeps* was of *investis*. The last syllable, though it has a deceptive look of coming from a verb, is nothing more than one of those manifold terminations in which the Latin language luxuriates[7].

Gracchi, and in the introductory passage on the *ager publicus*, as Dionysius, and in later times Polybius, may be recognized in the sketch of early Roman history given by the same compiler. So that he was following Posidonius, when he called the Latin and Italian towns (not however the *municipia* of Roman citizens) πόλεις ἰσοπολίτιδας: B. C. I. 10. Compare Cicero, de re p. III. 29, and Somn. Scip. 2.

[105] *Municipes qui una munus fungi debent:* Varro, V. 36: see likewise the definitions in Festus. Cicero has only put the ablative for the accusative, which *fungi* governs in the old legal phrase. Neither Naevius nor Plautus can have been Romans in any higher degree, than Lysias was an Athenian: the former would serve in the Campanian legion, and as *municeps Campanus* had nothing to shelter him from the resentment of the Metelli.

[6] It answered to λειτουργία: and where Livy, in the articles of the alliance between the Campanians and Hannibal, has written *nequis invitus munus faciat* (XIII. 7), he undoubtedly read in Polybius, μηδεὶς ἄκων λειτουργείτω. That the use of the word for the outlays of magistrates, and for donations, was derivative, may be learnt from the Lexicon Juridicum of Brissonius. Gellius, by the *munus honorarium*, which the *municipes* shared with the Roman people, understands just the reverse of burthens: but whether he had any definite notion or not, I cannot make out. It would be in keeping with the spirit of his age, if, when he said of the Caerites—*concessum illis est ut civitatis Romanae honorem caperent, sed negotiis tamen atque oneribus vacarent* (XVI. 13)—he had believed them to have been rewarded by an exemption from all burthens and laborious duties, while they were declared eligible to the highest honours.

[7] That the additional syllable does not affect the meaning is

That the name implied a liability to common burthens, was still known to the jurists of the third century[108]. It described the ἰσότιμος, with reference not to his rights, but to his duties; as did the name of ἰσοτελής to a like extent. But while the latter at Athens gained so extensive a range, the Latin word was narrowed, and confined to isopolites, sympolites, and πρόξενοι: the genuine ἰσοτελεῖς were comprehended along with the ἄτιμοι under the name of erarians. This class was reduced to a small number at Rome, after the freedmen had been enrolled in the tribes, and all the Italians had been admitted, on terms more or less favorable, to the franchise of citizens of the pale. Moreover, since Cicero's younger days, even this limited signification of the word *municeps* had certainly been thrown into the shade by a new one. Yet it had not been forgotten; and he might still have described the condition of Lysias without circumlocution: but he only hinted at the word which was trembling on his lips; and which he suppressed, because some of the old families were not ashamed to taunt him, as a *municeps* from Arpinum, with the name of *peregrinus*. Forty years after it may have been very generally misunderstood: and if Dionysius

evident in *princeps* for *primus*, and in the consecutive ancient ordinals given by Varro, *terticeps*, *quarticeps* and the rest. So *biceps* probably meant nothing more than *twofold*, *triceps threefold:* hence *Tricipitinus* would designate one of three children born at a birth. But as monsters and portents of this kind have sometimes two heads, it was inferred from the look of the word that *caput* formed a part of it: this notion may have prevailed before the language was studied by grammarians. As this derivation would not apply to *anceps*, and to our word *municeps*, others were devised; for the former from *capere*, for the latter from *capessere:* and so slovenly were the ancients in their etymology, they were not startled at having three different roots for the same termination. Hence it is less surprising that they did not observe how, if *munus* had been compounded with any verb, it could not have been either *capere* or *capessere;* because *facere* or *fungi* are the proper ones in this phrase.

[108] Ulpian, Digest. L. tit. 1. Municipes—recepti in civitatem ut munera nobiscum facerent.

found it in Macer's abstract of the original treaty, it may have been so obscure to him that he preferred leaving it out.

When he wrote, Verrius Flaccus was already so far advanced in age and reputation, that his great work on the signification of rare words may be regarded as nearly contemporary: and in this he treated at length of the term *municipes;* which for a hundred years before had been used familiarly in a sense quite different from the one it bore in the old constitutional law, namely for all such Italians as were neither settled at Rome nor in military colonies; as *municipium* was for their country-towns. He therefore gave a definition of *municipium*, illustrated with examples, by a jurist of the last age of the republic; to which he added remarks of other antiquaries on the condition of the *municeps*[109]: and the

[109] The definition forms the articles *municipium* in Festus and Paulus, which I shall insert piece by piece in the following notes. It has been preserved by a remarkable accident. It was contained in one of the columns of Festus which were burnt off; and Paulus omitted it; but some grammarian of Rome or Ravenna, one of the solitary shoots from the old schools, annext it in the 10th or 11th century to his copy of the epitome. For it is wanting in many of the manuscripts, and where it occurs is out of its place: and it is as plainly distinguisht by its integrity and copiousness from the meagre shriveled articles that have past through the hands of Paulus, as those of the abridgement of Stephanus by Hermolaus are from the still more compendious abstract, which unfortunately for the most part occupies its stead; or the Fulda Servius on the first two books of the Aeneid, from the commonplace commentary that goes under the same name. Paulus had also omitted an article on *municeps:* and on this again we may congratulate ourselves; for it was contained in one of the leaves severed from the manuscript, and now lost, but had been transcribed by Pomp. Laetus. This article consists of three parts, by as many different hands. First comes an account taken from Aelius Gallus, how the franchise of the *municeps* might be acquired in three several ways,—by birth, by exercising isotely, and by manumission by a *municeps:* this is followed by two definitions of the isopolitan *municipium*, one anonymous, the other by Servius, the son.

original accuracy and completeness of the information he afforded are manifest, even in the clumsy abridgement that has preserved it.

Municipium beyond doubt, like *mancipium*, was originally the right itself; but, as happened at least in one sense to the latter word, was transferred to the object to which the right was attacht; in this instance to the class who possest it. This class, with the above-mentioned exclusion of the genuine ἰσοτελεῖς, is the subject of the definition referred to, which distinguishes three kinds of *municipia*.

The first and most ancient[10] of these is defined with great precision. It comprised those persons who, if they came to Rome, shared all the rights and burthens of Roman citizens, without being such, but were excluded from the elective franchise and from honours[11]. Another definition, expressly ascribed to an ancient jurist[12], notices it as a necessary condition, that the natural country of

[110] *Initio fuisse*, says the definition by Servius.

[11] Municipium id genus hominum dicitur, qui, cum Romam venissent neque cives Romani essent, participes tamen fuerunt omnium rerum ad munus fungendum una cum Romanis civibus, praeterquam de suffragio ferendo aut magistratu capiendo; sicut fuerunt Fundani, Formiani, Cumani, Acerrani, Lanuvini, Tusculani, qui post aliquot annos cives Romani effecti sunt. Fest. Epit. *Municipium.* Item municipes erant qui ex aliis civitatibus Romam venissent, quibus non licebat magistratum capere, sed tantum muneris partem. Festus, *Municeps.*

[12] At Ser. filius aiebat initio fuisse qui ea condicione cives Romani fuissent ut semper rem publicam separatim a populo Romano haberent: Cumanos videlicet, Acerranos, Atellanos, qui aeque cives Romani erant, et in legione merebant, sed dignitates non capiebant. Festus, *Municeps.* This Servius, the son, can scarcely be any other person than the very promising son of the learned and eloquent jurist Servius Sulpicius, the same who is several times mentioned by his father's friend: Cicero, Epp. ad Div. IV. 3. What is reported in Festus, was his oral doctrine (*aiebat*). As he probably left no work behind him, it is natural enough that he should be past over in the Enchiridion of Pomponius: D. I. t. 2. 2.

such municipals should be a completely distinct state from the Roman: it terms them however, according to the franchise they enjoyed, Roman citizens, though ineligible to honours. Three Campanian towns are taken as instances: and it is added that their citizens served in the legion. The meaning of this must be, that their contingents were not considered as *auxilia*, but at least formed one legion, which was numbered along with the Roman; as the Campanian legion was in the war with Pyrrhus*. In the genuine Roman legions there can never have been a place for emigrant municipals, since they were not enrolled in any tribe. This relation corresponds to that of isopolity, as exactly as the Roman tribes of houses to the Greek. As the Roman definition speaks of participation in all things, so does the Greek inscription of participation in all divine and human things[113]. Nor was the relation of a *proxenus* forein to Roman usages[14]: and as a person who contracted this relation with the republic, enjoyed the same privilege as one who was *municeps* by virtue of a treaty with his state, isopolity is called by Livy a hospitable relation entered into with a whole people[15]. I will not maintain that the story which represents Coriolanus as having been privileged to sit in the senate of every Volscian town[16], is to be received as

* *Octava legio:* Orosius, IV. 3.; compared with Livy, XXVIII. 28, Polybius, I. 7, Appian, de Reb. Samnit. Exc. 9. Valerius Maximus, II. 7. 15.

113 Μετοχὰν καὶ θείων καὶ ἀνθρωπίνων πάντων: Inscription in Reinesius, p. 491. l. 13. Participes omnium rerum: Festus.

14 *Hospitium* cum (Timasitheo) ex senatusconsulto factum: Livy, v. 28.

15 Cum Caeretibus *hospitium* publice fieret: Livy, v. 50.

16 Dionysius, VIII. 9. By the side of the Comitium were two places called by the perplexing names of *stationes municipiorum* and *graecostasis*. Be it remembered that in Verrius *municipium* means the whole body of the municipals: these names, I conceive, designated two places, one allotted to the municipals, the other to the Greeks from allied cities, that they might hear the debates, like the

an authentic tradition: but it assigns no other honour to him than what the magistrates in Crete enjoyed in isopolitan towns: and this might be granted on similar grounds to a *proxenus* of high estimation. Here again is a feature belonging to ancient tradition, which no late writer could have invented.

The second class of municipals is merely defined, by a description equally unsatisfactory and obscure, as persons whose whole state had been united with that of Rome[117]. For this applies no less to the third class, described in a way just as unintelligible in itself, as corporations of towns and colonies, which, by their adoption into the Roman state, had become *municipia*[18]. But in both cases the examples supply what is wanting to the explanation in the epitome. The Caerites and

κόσμοι in the Cretan cities (above, p. 52),—places resembling privileged seats in the hall of a parliamentary assembly.

[117] Alio modo cum id genus hominum definitur quorum civitas universa in civitatem Romanam venit; ut Aricini, Caerites, Anagnini. Festus, *Municipium*.

[18] Tertio—qui ad civitatem Romanam ita venerunt uti municipia (perhaps *municipes*) essent sua (perhaps *suae*) cujusque civitatis et coloniae; ut Tiburtes, Praenestini, Pisani, Urbinates, Nolani, Bononienses, Placentini, Nepesini, Sutrini, Lucenses. *Urbinates* is commonly given only as a various reading, and the text has *Arpinates:* which I do not reject because it would assert anything false; for Arpinum became a municipium in 560, just as the others did in 660: but I prefer *Urbinates;* because then all the places mentioned are such as acquired the full franchise at the same time; and all equally formed the strength and core of Cinna's party: Appian B. C. I. 65. Arpinum would stand insulated among them, though it would naturally occur to a scribe, instead of an indistinctly written word that lookt like it. The very learned author of the definition has introduced, in one or other of the three classes, the five towns that were of chief note at the destruction of the Latin state: of which Lanuvium and Tusculum were then admitted to the full franchise; Aricia was kept for a time in the rank of a subject; and Praeneste and Tibur continued to be isopolitan towns, though not on an equal footing, for two centuries and a half after.

Anagnians are mentioned as instances of the second class: of whom the former represent all such municipals as were incapable of holding offices at Rome[119]; and the latter, when they were degraded by way of punishment into the class of subjects, received the name of Roman citizens*. The places in the third class are all either Latin colonies, or Italian towns, such as by the Julian law, or by those which followed and gave it a wider application, became *municipia* in the later general sense. The situation of the subject towns of the second class was that of a dependent sympolity[20], that of country-towns in a canton under a soverain city, precluded from every independent relation to others, and unconditionally subject to the will of the ruling state. But the Roman country-towns of this class were more fortunate; inasmuch as they enjoyed all the privileges of isotely in the capital. The colonies of the ancient sort were on the same footing with these communities, subject to the same personal disabilities, and equally incapable of legislating for themselves; though the whole body of their inhabitants possest the Roman franchise. The last class answers to the equal sympolity of the Greeks: but they made a more complete sacrifice of independence than a town that became a member of the Achaean state: and whatever may have been the definition Verrius gave of it, the right one would

[119] One should not expect to find the Caerites here, but among the isopolitan towns (see note 115): in which case, whatever may be said, it would be a puzzle that their franchise was held degrading. The Romans unquestionably conferred honours upon them after the Gallic invasion, as Livy relates; so that Strabo is unjust in censuring Rome for want of gratitude on that score (v. p. 220.c.): nevertheless the definition is correct, as I shall shew under the year 397.

* Livy, IX. 43.

[20] This is the πολιτεία κοινὴ with which, according to the speaker in Dionysius, VIII. 77, the Latins might have been content; the same that Romulus grants to the cities he conquers, and that the people of Eleutherae sought from the Athenians: Pausanias, I. 38. 8.

be, that it embraced those towns and Latin colonies, the freemen of which were so united with the citizens of Rome, as to enjoy the highest franchise, be admitted into Roman rustic tribes, have votes, and be eligible to offices. After so complete a union, the term *municeps* was as illsuited to them as to a patrician. But the want of a word to designate the newly formed relation caused the name of an extinct one to be applied to them, as was the case with *Quirites, populus, plebs, Latinus.* Scarcely any municipal towns of the oldest class were remaining, when the Roman franchise was extended over Italy by the Julian law: and if a few places, like the Camertes and Heraclea, still retained that high privilege, yet no general name was any longer current for relations that had become so rare. The word however had continued in use for the towns in the west of Latium, and for Fundi, Formiae, and Arpinum, after they were admitted into the tribes: and so it came to be applied to the new provincial towns, which stood on just the same footing with reference to the whole republic[121],

[121] As I am not writing a book on this subject, I shall spare myself the task of exposing the absurdity which runs through the whole of the wretched chapter (XVI. 13) where Gellius tries to correct the harmless errour made by his contemporaries, in calling the citizen of a military colony, as of any other provincial town, a municeps. *Absurda Gellii verba,* says Roth (de re municipali, I. 20); who, though the object of his work permitted him to go round the thorny thicket, through which I have been forced to seek a path, will not deem an inquiry connected with his own unworthy of an attentive examination. One can scarcely believe one's senses, when one finds out that the colonies spoken of by Gellius are those of the very earliest times, the bodies of three hundred householders, subject as sympolites to Rome; while his municipia are the old isopolitan towns; and that he knows nothing about the municipal towns of his own time, nor about the Latin colonies, nor even about the flourishing military colonies, such as were still founded in his day: like the boy in Goetz of Berlichingen, who from sheer learning does not know his own father. But in fact even those antiquated colonies and municipal towns only float before him like figures in a heavy dream. Never did man reach

In ancient Greece the isopolites, who settled in an allied city, were not reckoned among its freemen; because they were not members of any of the tribes, or of the subordinate corporations. But in the Italian states those who exercised the liberties of the civic franchise, and shared the common burthens, though they were not registered in any such division, appear everywhere to have been accounted citizens; at Rome under the name of erarians. Now, when it came to pass that Roman citizens without a tribe were scarcely to be found, at least in ordinary life, and indeed according to the actual state of things appeared impossible[122], those who were writing about ages long past, were led by analogy to deny that the municipals had been citizens. But that the author of the instructive definition I have quoted was mistaken on this point, is sufficiently evident from the casuistry by which Sp. Postumius wanted to turn the curse attacht to breaking the peace upon the Samnites. He was delivered up to the people of Caudium, whose canton bordered immediately on Campania, and was undoubtedly

a higher pitch of pedantry than Gellius in this passage: where, at a time when the will of the emperor, the ordinances of the senate, nay the edicts of the pretors, had long been the fountains of law for everybody throughout the Roman world, and no trace of independence was left, except here and there a few provincial customs, he still ascribes a legislative power to the municipal towns: while of course he lookt upon the Roman people, whose ghost was raised once at the beginning of every reign to pass a *lex curiata*, as its own lawgiver. His world was not a past world, revived in the memory and the imagination: it was only found in the pages of obsolete books. There was not a scribe in a country-town, but would have laught at his blindness to the existing state of things; which is not merely childish, but, like every dereliction of nature, has something frightful in it.

[122] So early as in 580 C. Claudius opposed his collegue's rigorous treatment of the freedmen; saying that to exclude them from all the tribes was to deprive them of their freedom and their civic franchise: Livy, XLV. 15.

the district united by an isopolitan relation to Rome[123]. Now, had it not been sufficient for making him a Samnite citizen[24], that he had abandoned Rome, and appeared in Samnium, with the avowed purpose of exercising his municipal franchise there, his conduct would have been as silly as it was revolting. According to the pharisaical letter, it mattered not whether he or C. Pontius committed the impious outrage on the fecial. But the great Samnite, who was above superstition, like Hector, bad the Romans take shame to themselves for their fraud: for the gods would not be mockt. As to the letter of the law however he made no objection.[25].

This same instance shews that the civic franchise was taken up by the mere will of the municipal, and the transfer of his residence, without any need of an admission by the state to which he attacht himself. This is the *jus exulandi*[26]. It was in force till just before the Social war, even with respect to Rome, though it had become very rare and obscure. *Exilium*, as Cicero rightly observes, was not banishment; which was entirely unknown to the Roman law. It was nothing but the act whereby a man renounced the freedom of his own city, by taking up his municipal franchise: and the liberty which a person, bound by sureties to stand his trial before the people, had of withdrawing from the consequences of their verdict by exiling himself, was only an application of the general principle. If the accused staid till sentence was

[123] For the grant of the municipium to a portion of the Samnites, see Velleius, I. 14: for the delivery of Postumius to the Caudines, II. 1. Compare Livy, IX. 10: traditi fecialibus Caudium ducendi.

[24] Se civem Samnitem esse: Livy, IX. 10.

[25] Ita Dii credent Samnitem civem Postumium, non civem Romanum esse—ludibria religionum—vix pueris dignas ambages: Livy, IX. 11.

[26] Cicero, de Orat. I. 39 (177): Qui Romam in exilium venisset, cui *Romae exulare jus esset*. See Vol. I. p. 324.

past[127], he was condemned as a Roman; and it would be executed upon him wherever he was taken. But if he availed himself of his municipal franchise in time, he had become a citizen of a forein state, and the sentence was null and void. The ground of this exemption was not his migrating, but his attaching himself to a city which had a sworn treaty of isopolity with Rome[28]. They who settled in a place without such a privilege, needed a decree of the people, declaring that their settlement should operate as a legal *exilium*[29].

The old practice of dressing up every legal right in the shape of an incident gave birth to the story, that in the year after the treaty of Cassius, during a severe famine, many families retired to the neighbouring cities, and accepted a franchise there; that some remained; others after a time returned home[30]. This right of becoming a Roman again belonged undeniably to an emigrant of this kind. Perhaps he had that of recovering his old place in his tribe *postliminio*, but at all events that of entering among the Romans as an erarian, as had every other freeman of his new country[31]. Now, had no limits been set to the exercise of this privilege, this great birthright of every Roman would have enabled him to

127 Not merely till the majority was decided, but so long as a single tribe had yet to vote: Polybius, VI. 14: so that he might depart even after 34 tribes had condemned him.

28 *Ἐν τῇ Νεαπολιτῶν, Πραινεστινῶν—καὶ ταῖς ἄλλαις πρὸς οὓς ἔχουσιν ὅρκια*: Polybius, VI. 14. It was not necessary in such cases that the states should be exactly on a level. How completely a Praenestine commander was subject to the Roman one, appears from the anecdote of Papirius Cursor in Livy, IX. 16: and Naples was tributary: Livy, XXXV. 16.

29 Id ei justum exilium esse scivit plebs: Livy, XXVI. 3.

30 Dionysius, VII. 18.

31 On the *mutatio civitatis postliminio* see Cicero, pro Balbo, 11 (28). That an *ἰσοτελής* enjoyed the privilege of the municipium equally with a native, we learn from Aelius Gallus in Festus under Municipium.

defy the government, and could never have been retained, as it was for five centuries: for, if the convict returned as a freeman of Tibur, the former prosecution, having once been despacht, could not be revived. For this reason he was excluded from the communion of fire and water. He might no doubt come to Rome: but when there he was under a ban, and out of the peace of the commonwealth, an unprotected outlaw. This is the interdict that was taken off when an exile was to be recalled: there was no remission of banishment; for that, according to Cicero's instructive remark, was a punishment unknown to the Romans[132].

As *exul* referred to the party's original country, and designated a person who had withdrawn from it, and *exilium* the home he had chosen in a forein state[33], so in this he was an *inquilinus;* a derivative from a word which undoubtedly was once in use, of an Oscan form, *inquil.* The Latin language, so rich in law-terms, cannot have wanted a peculiar word to denote the municipal who had made use of his right. In Sallust, who preserves the old phraseology with a predilection guided by learning and judgement, Catiline calls the provincial, Cicero, *inquilinus civis*[34]; as though Arpinum had still been a municipal town forein to the republic.

We are surprised however at finding the same writer term a Latin officer in the Roman army a citizen from Latium[35]; not indeed at his considering the Latins and

[132] Cicero, pro Caecina, 34 (100). On the *interdictio aqua et igni* all that is essential may be found in Heineccius, Antiq. I. 16. 10; though it is very important to rectify the erroneous notion, that the object of this process was to force a condemned person to fly his country. Cicero certainly had not lost his franchise by this interdict.

[33] Qui nullo certo exilio vagabantur: Sallust.

[34] Catilin. 31.—Sallustius, proprietatum in verbis retinentissimus: Gellius, x. 20.

[35] Sallust, Jugurth. 69, says of T. Turpilius, who was scourged and beheaded, *nam is civis ex Latio erat.*

Italians as municipals of the ancient class; but because the Latin officer, as appears from his not being protected by the Porcian law, had not chosen the Roman franchise instead of his own. Yet here again the historian conformed to a mode of speaking, which, though unquestionably incorrect, was sanctioned by its high antiquity. The contracting a municipium with towns and cantons, where sympolity was out of the question, and some of which are adduced as examples of isopolity, is spoken of as a grant of the franchise without a vote[136]. The Campanians, and the citizens of Acerrae, are described as having become Romans[37], because every individual had the power of becoming so as soon as he chose. Now, when it is stated of an independent community of this kind, that its members had been made Romans by a law, such a law only held good so far as Rome was bound by it: with regard to the Acerrans it was void, unless they adopted it[38]. This they would do by enacting a corresponding law of their own. The proceeding was the same as when a treaty of peace was introduced among the Greeks by a decree of either party. The case was different with conquered states, such as Anagnia and other Hernican cantons. These were fain to accept the franchise and subjection which the soverain people assigned

[136] To the Campanians, the citizens of Fundi, Formiae, Cuma, Suessula, in Livy, VIII. 14; to the first three and a part of the Samnites, in Velleius, I. 14; to Acerrae, in the same passage, and in Livy, VIII. 17; to the latter, Cuma, and Atella, by Servius, the son, in Festus, under Municeps. The Hernicans are described as *προσληφθέντες εἰς τὴν πολιτείαν* in Dionysius, VIII. 69; and as *πολῖται*, 77. On the other hand the consul C. Varro speaks correctly, when he says to the Campanians (Livy, XXIII. 5) *civitatem magnae parti vestrum dedimus*; for this *civitas* was nothing more than the liberty of exercising the municipium, of which only a part availed themselves: he does not even mean that they were admitted into tribes.

[37] Cives Romani tunc facti sunt Campani: Ennius.

[38] Nisi fundi facti essent.

to them; a lot so unwelcome that the Aequians took up arms to avoid it[139].

Still the register of the Caerites, in which all the citizens of such towns were enrolled, would not have been a book of dishonour, had not the names of those freemen, enjoying the highest franchise, who forfeited their right of holding office, been transferred into it. At Athens likewise a citizen, who incurred the highest degree of *ἀτιμία*, sank to a level with the *ἰσοτελής*. The equality between a degraded Roman and an *inquilinus* was still more exact, and extended even to the name of citizen. Of course the isopolites who made use of their franchise, were enrolled like the sympolites among the erarians. But I also hold it certain, that the Caerite tables were only a part of the general register containing that class of citizens. Nor are we to look upon them as a list of the citizens of all the isopolitan towns: Rome had connexions of this kind to a great extent, before Agylla became an Etruscan city: and those towns can never have been mentioned but with honour. It may easily be conceived however that, when the citizens of Caere had themselves been brought down from that respectable rank, their list might serve to receive degraded freemen; and that their name might stand for the whole class of sympolitan subjects, if that class was revived in them, after the old towns of the same order had long been admitted into the tribes[40].

139 *Civitas sine suffragii latione data:* says Livy, IX. 43, of the punishment inflicted on the Anagnians and other Hernicans; the same expression which described the isopolitan franchise. For the indignation of the Aequians see Livy, IX. 45. Of the Caerites Strabo says, v. p. 220. c. *πολιτείαν δόντες*: and Dionysius always speaks of *πολῖται* and *πολιτεία* in mentioning the incorporation of the conquests made by Romulus.

40 I shall revert to the degradation of the Caerites, when I come to the epoch at which it happened. That they obtained the isopolitan franchise after the Gallic war, is no less certain than that the definition of the municipium, which ranges them in the same line with

But still lists of all the freemen in every town with which an isopolitan relation had been contracted, were indispensable to keep strangers without a title from intruding as municipals: and if, according to the looser mode of expression, all the citizens of these states were considered as freemen of Rome, and the amount of all those lists was added to that of the three Roman orders, the result, though for the present it is merely hypothetical, would coincide with the conjecture already suggested, which explained the numbers of the Roman citizens in the tables of the census as being the aggregate made up of the Romans and their isopolites[141]; and would thus throw some light on those numbers, which otherwise, when one perceives the absurdity of supposing that they refer to the Romans in the strictest sense, are a puzzle scarcely paralleled in ancient history.

I will remind the reader of the unexampled ebb and flow of those numbers, fluctuating between 104000 and 150000, which the annals afford us no means of explaining, for the sake of observing, that the present case is not an instance of changes such as may occur in modern states, through vicissitudes of fortune, from the enlargement or contraction of their territories, but of a sudden increase and decrease in the number of citizens by many thousands at once. Besides the numbers reported, whether they be taken for the adult males, or, in a sense somewhat narrower and correcter, for the serviceable men[42], are, when so understood, utterly incredible. The mean

Anagnia, deserves unlimited credence. Even Strabo's censure of the Romans, v. p. 220, coming from so clearheaded a writer, confirms it: only he confounds things that happened at different times.

[141] Vol. I. p. 552.

[42] Οἱ ἐν ἥβῃ Ῥωμαῖοι: Dionysius, v. 20, 75. IX. 25, 36: *numerus eorum qui arma ferre possent:* Fabius, in Livy, I. 44: that is, from the time of putting on the manly gown to the end of the sixtieth year. Pliny, who speaks of *libera capita*, XXXIII. 5, is entitled to no regard in a case where he must have felt the same difficulty, and spent little time in thinking how to remove it.

of the returns preserved is about 130000, the amount quoted from the last census before 280: and allowing only an equal number for aliens and slaves, this would give a population of 650000, for a territory which, between Crustumeria and Ostia, the Etruscan border and that of the nearest Latin towns, scarcely covered 200 square miles. But say 300: for how many months in the year can this surface have yielded the means of subsistence? how would the deficiency be supplied, without trade and commerce? how could a merely agricultural population multiply so enormously? These same 130000 able-bodied citizens, with the serviceable aliens and slaves, are to be blockaded within the walls of Rome by the Veientines, who just before had been hard prest by the Fabii, and to suffer from hunger without making a sally; like the cowardly, but not equally numerous multitude, which 1000 years after allowed itself to be reduced to extremities by Vitiges. Moreover, immediately before the battle of the Allia, above 152500 heads were registered. But in that battle there were at the utmost 28000 Romans, including the proletarians and erarians, and all the elderly men up to the age of sixty: and so certain is it that these were all who could be mustered, that, when this army was disperst, there was nobody to guard the walls. To fill up the measure of absurdity, after a return of only 104000 in 289, a dreadful pestilence rages in 291, which must have swept away at least a third of the population: this is followed by many years of the most disastrous wars, in which thousands of Romans must have fallen, or been led into slavery: and now comes a new return in 295, amounting to no less than 117000.

After weighing all these points, one can hardly refrain from regarding the returns as no less unworthy of serious attention, than the extravagant numbers of the slaves at Corinth and Aegina[143]. But we cannot throw them aside

[143] Nor is the wellknown pretended return of the aggregate population of Attica worthier of credit, at least in respect of the

with the same contempt. For they were recorded in the original censorian rolls, which Dionysius speaks of as extant when he wrote[144]: and even assuming that they were fabricated after the Gallic invasion, still nobody would have devised such an absurdity as the increase of an eighth after the pestilence. In this strait, others as well as Pliny have probably had recourse to the shift of supposing, in spite of the express statements to the contrary, that the returns might include the whole population. But this cannot be the case: for the statement of the number of serviceable men during the Cisalpine war coincides with the census of the same period[45].

This statement raises my conjecture to certainty. For it couples the Romans with the Campanians: so that the

slaves. Yet one can more easily conceive how even ingenious men might be deluded by it, if not in the habit of looking at philological traditions by the light of actual experience.

[144] He had seen them himself: I. 74, IV. 22.

[45] Polybius, II. 24. The Roman and Campanian infantry amount to 250000, the cavalry to 23000. In Orosius, IV. 13, the former are stated at 348200, the latter at 26600, on the authority of Fabius. Nothing is commoner in Orosius than mistakes in numbers: and so here we have a C too many; and the total 274800 differs only by 1800 from that in Polybius, who had no need to be very precise. The statement belongs to the year 523, in which a census was taken. Livy, in order to devote a whole decad to the second Punic war, crowded the occurrences of more than five lustres, 21 years, into his twentieth book: the author of the epitome records the returns in two of them, which fell, as is plain from the place where they stand, about the time of the Cisalpine war. All the manuscripts have: *lustrum a censoribus bis conditum: primo lustro censa sunt civium capita CCLXX millia:* then some proceed with CCXIII, others with *CCXIII millia;* others insert *alio* before these words. The number of the second census has either dropt out by mistake, or been wilfully omitted: it would not be a violent change to write *altero* CCLXXIII *millia.* We have sustained no material loss however from the corruption of the text; for the 270000 differs only by 3000 from the number in Polybius. The Campanians, that is, the citizens of Capua and their dependents, amounted to no less than 34000; the number specified by Livy, XXIII. 5, who did not state it without authority.

latter must likewise be included in all the returns preserved by Livy from the time of the Samnite war; and not only the Campanians, but all the other isopolitan states. Velleius mentions* at the same epoch, and in the very same terms, that the freedom of Rome was granted to the Campanians and to a Samnite canton: and the two returns of the census in the time of Alexander,—one of them 130000, the other 250000[146]—are fully accounted for, if the former be considered as the last before the beginning of his reign, the latter as that of the year 418, after those nations had entered into a relation of isopolity with Rome. The same remark applies to the earliest ages: and so the rising and falling of the numbers in the census during the third century indicate, not an increase and decrease of the Roman nation, but a change in these peculiar connexions: which certainly corresponded in general to real alliances and confederacies, but are also perfectly conceivable without them. They were probably contracted in some instances with states so far off, that Rome could reap nothing but the assurance of their goodwill from the association. If it be true that the second Q. Fabius was lawfully married to the daughter of an eminent citizen of Maluentum†, this must have been an isopolitan town; and the people of Massalia would be included in the census of the year 362. Thus the fluctuation in these numbers does not afford a safe measure even of the power that accrued to Rome from its alliances. Nevertheless a right conception of the statement in Polybius is important; because it places beyond doubt and clears up several accounts of the relations between Rome and the neighbouring states, and renders

* I. 14. Abhinc annos CCCL...Campanis data est civitas, partique Samnitium, sine suffragio.

146 Plutarch, de fort. Roman. p. 326. c. Livy, IX. 19: the latter is only a round number.

† Festus, Numerius.

statements instructive, which would otherwise be absurd[147]. It also enables us to comprehend how the number of the metics in a strict sense came to be so trifling, that no such class seems ever to be spoken of.

Had the amount of the census in the Cisalpine war been taken according to the same rule as two centuries before, it would perhaps have been the same as that given by Fabius* for the serviceable men of all Italy. But the case was altered. As long as there were several independent states, each would add the census of its

[147] Even in the history of the Greeks to the west of the Ionian gulf, who adopted so many Italian institutions. There is a statement, scarcely less absurd than those about Rome, according to which the Agrigentines, when the Carthaginians appeared before their walls, were only a little above 20000, but the whole number of inhabitants including the forein residents amounted to no less than 200000 (Diodorus, XIII. 84). By these, as the number of the freemen proves, are likewise meant adult males: and so the account must have been understood by a writer, who, though an impostor, is perhaps more ancient than Diodorus, when, under the name of Potamilla, he spoke of 800000 freemen at Agrigentum: see Wesseling's note. Can we suppose those 200000 men, though they were not all completely armed, to have been such whitelivered wretches, as to allow the Carthaginians to take up a position before the city, and even to starve them into a surrender? But here again the 180000 consisted partly of sympolites scattered over an extensive territory, partly of isopolites; and not merely Greeks, but also Sicanians and Sicelians: for these tribes were not so forein to the Greeks, whose blood at this time was far from pure, as we are apt to imagine. The same explanation applies to the enormous numbers of the Italian Greeks, as at Croton. The story of the 300000 Sybarites however I should not consider as historical; since it relates to a period prior to the abolition of royalty at Rome; and the number is one which through all the stages of its multiplication by ten, is no more to be taken strictly than seven or seventy among the Jews (see Reimar's masterly treatise De assessoribus synhedrii LXX linguarum gnaris); or than six, and its multiples by ten, among the Latins: for instance in the story of the setting free the six thousand captives: Livy, II. 22. Such statements, when they spring up naturally, do not deserve to be called false any more than true.

* Eutropius, III. c. 5.

isopolites to its own; so that the members of the same people were counted several times over. But, when Rome had become the center of the whole, this practice would have defeated the purpose of surveying what forces of its subject states the senate could command. It is even extremely probable that the allies were in many cases[148] forbidden to contract a municipal relation with one another, like the towns in the territory of a people that had provoked the anger of Rome. An equal alliance seems to comprehend isopolity, indeed to be equivalent to it[49]. But the example of the Campanians, who are said to have had such an alliance with Rome, though they deferred to her majesty, and indeed had often recognized her soverainty, proves that the name had ceast to be taken in the literal sense. According to the ancient meaning of the word, the Romans were still in a municipal relation with Tibur, Praeneste, and all the allied towns in respect of which Roman citizens had the right of exile; even with the Neapolitans, who paid them tribute: and so were the Latins and the Italian allies with the Romans; since they were at liberty to make election of the Roman franchise, though under restrictions granted for the relief of their own necessities*. But, as these two classes were subject to peculiar laws, which distinguisht them from each other, and from the municipals of the old stamp, this title was withdrawn from them[50]:

[148] The Pelignians and Samnites had it with Fregellae.

[49] *Foedus aequum*—of the Campanians: Livy, XXIII. 5. As a reward for the faithful assistance rendered by Massaliots in the Gallic war, *immunitas data, et locus spectaculorum in Senatu decretus, et foedus aequo jure percussum*: Justin, XLIII. 5. This was undoubtedly described at Massalia as ἀτέλεια καὶ προεδρία ἐν τοῖς ἀγῶσι καὶ ἰσοπολιτεία. The inferior franchise enjoyed by the Transalpine Gauls before the reign of Claudius, when they were still excluded from the senate and public offices, Tacitus terms *foedera et civitatem Romanam*: Ann. XI. 23.

* See above, p. 53.

[50] The classical passage for this distinction occurs in Livy, XXVI. 15. The senate is to inquire *num (Campani) communicassent consilia*

and none but the isopolites strictly so called were coupled with the Roman citizens.

Since the Latins in the sixth century, whenever they came up to Rome, enjoyed the honour, one indeed connected with little power, of giving their votes in a tribe selected by lot, it is highly probable that this was meant to indemnify them for the loss of an elective franchise, which, so long as the old constitution of the centuries lasted, had been exercised by resident municipals: and this may have been the foundation for the story, that Cassius had hoped to carry his law by the votes of his Latin and Hernican partisans[151]. In fact that obsolete institution had become so strange to the later Romans, that the statement in our definition,—which, with this unimportant qualification, was perfectly correct, after the tribes had become the basis of every franchise,—may not be an absolute proof that the municipals did not anciently vote in the classes: which the clients undoubtedly did, while they too were merely erarians. If the latter practice, as I am ready to admit, was an innovation upon the law of Servius, the municipals would scarcely be neglected; since their votes might likewise be turned against the plebeians. But when Cassius is represented as having sent for the Latins and Hernicans to come to Rome and vote, the errour is palpable: and it is so plain that some late annalist had been deluded

cum aliquibus sociorum, Latini nominis, municipiorum: for so the words ought to be stopt, that the names of the three classes may be connected in the old style by juxtaposition, and in a scale answering to their rank,—the Italian allies, the Latins, and the free confederated municipia, such as Cuma, Fundi, and Formiae. Gronovius rightly saw that the last noun does not govern the preceding ones: but the conjunction he wishes to prefix to it disfigures the old expression, and destroys the distinction between the Italians and Latins. I will observe by the way that immediately after, where the common text has: num ope eorum in bello forent *et municipiorum* adjuti, the true reading is *et adminiculo,* discernible in the manuscripts which give *et admunicipiorum.*

151 Dionysius, VIII. 72.

by his recollection of the stormy scenes of his own age,—when the tribunes sought to terrify the senate, by calling in the Latins and Italians, and by threats of violence,—that it almost leads us to question the story altogether, credible as it is when taken with reasonable qualifications.

In treating of subjects very remote from modern conceptions, it is advisable to avoid expressions that may suggest vague or erroneous accessory notions. But in future, when speaking of isopolites, I shall often use terms drawn from the old Germanic institutions. That the sympolite, with his inferior franchise, answered to the citizen of the pale * in the German towns, is certainly clear enough[152]. But I conceive that, between a person of this class and an outburgess †, there was this distinction, that the latter could only be called by the former name when he removed into the city. When a single individual obtained the franchise of an outburgess, he was always a person of consequence, a knight or a prelate. He resembled the πρόξενος of antiquity. It was not however solely on individuals that the freedom of a city was bestowed; but likewise on whole towns or districts: and it appears to me that this relation ‡, of which the history of Switzerland, especially throughout the fifteenth century, is perpetually speaking, without explaining it, can be no other than that of the ancient isopolity. All the citizens or other members of the privileged community would become outburgesses, say of Zurich ; in the same sense as the Campanians became freemen of Rome: the individual who made use of this franchise, became a citizen of the pale. The same relation might be contracted with a rural canton §. The entering into such relations had always a

* The Pfahlbürger: see Vol. I. p. 405.

152 See Hüllmann, Geschichte der Staende, 2nd Edit. p. 582, foll.

† Ausbürger. ‡ Burgrecht.

§ The name for this relation was *Landrecht:* the author observes, that he does not know whether there was a term to denote

defensive alliance connected with it: it is not surprising therefore that the names which properly belonged to them, were applied to cover treaties which the cantons were not at liberty to conclude apart from the confederacy[153], and that, owing to this, the isopolitan relation was at length forgotten.

the same relation toward a rural community, as *Pfahlbürger* exprest with regard to a city.

[153] That the *Burgrechte* mentioned in the later history of Switzerland were nothing but alliances, screened under that name, for the reason abovementioned, I have learnt from a Swiss jurist: instances in which the possessing the *Burgrecht* led to the franchise of the pale, are furnisht by German records.

ON THE FRANCHISE OF THE LATINS.

SOME privileges might be exercised by an outlying freeman, without changing his relation to his native country: but of others he could not avail himself without becoming a citizen of the pale: and these were determined not by the higher dignity of the privilege, but by the nature of the case. Without quitting Capua, Pacuvius Calavius had wedded a Claudia, and had given his daughter in marriage to a Roman*. This bred no confusion: but if he had purchast Roman lands subject to the land-tax, the republic would have lost the tribute due upon them, which was assest, not on the objects, but on the persons liable to it. Thus the higher right, the *connubium*, was open to every isopolite: the *commercium* was reserved for those who settled in their adopted country.

It is mentioned as one feature in the relation between Rome and Alba, that the *connubium* subsisted between them[154]: and though all pretended statements concerning the earliest times are generally rejected, perhaps with needless rigour, this at all events was meant to explain the origin of the same right among the Latins, and therefore deserves attention. The right of intermarriage with Alba is exprest in the legend of the mothers of the Horatii and Curiatii; that with the Priscans

* Livy, XXIII. 2.

[154] Strabo, v. p. 231. b. Βασιλευόμενοι ἑκάτεροι χωρὶς ἐτύγχανον· οὐδὲν δ' ἧττον ἐπιγάμιά τε ἦσαν (read ἐπιγαμία τε ἦν) καὶ ἱερὰ κοινὰ τὰ ἐν Ἄλβᾳ καὶ ἄλλα δίκαια πολιτικά (isopolity).

and Latins, in the story of the matrons who before the battle of Regillus were allowed to part from their husbands[155]: and on such matters tradition cannot deviate from the truth. The marriage of the last king's daughter with the dictator Mamilius may certainly pass for a historical fact. To these wellknown instances, we may now add the account that the armies under C. Marius and Q. Pompaedius, when standing in array against each other, were sad at heart, because, intermarriages having been legally sanctioned, many were linkt together by the ties of friendship and affinity[56].

Now that this evidence has come to light, the notion that the genuine Latins had no right of intermarriage may be considered as entirely refuted. For it is surely incredible, that they who had the advantage of the Italian allies in the honorary admission to the elective franchise, should have been worse off on a point so important as intermarriage. If this had been so, they would have had no fellowship of rights with the Romans, so long as they continued outburgesses, with the exception of the twelve colonies, which had the right of contracting *nexa* and receiving inheritances[57]. With regard to the condition of these colonies I shall express my opinion, when my history reaches the time at which I conceive them to have obtained that privilege. The cause which had barred the *commercium*, no longer existed: and it might have been granted to all the Latins, had not mistrust, and a wish to check their growing prosperity, just then rendered Rome averse to all concessions.

According to the plan of my work, I should also defer speaking of the Latin colonies, whose franchise was extended to a class of freedmen so often mentioned by

[155] Vol. I. p. 556.

[56] Diodorus, Exc. de Sententiis, XXXVII. 10. p. 130, ed. Dindorf: Οἱ παρ' ἀμφοτέροις στρατιῶται—συχνοὺς οἰκείους καὶ συγγενεῖς κατενόουν, οὓς ὁ τῆς ἐπιγαμίας νόμος ἐπεποιήκει κοινωνεῖν τῆς τοιαύτης φιλίας.

[57] Cicero, pro Caecina, 35 (102).

the elder jurists, that it must have been very numerous, until I come to the time when this order was establisht. But I cannot so long put off discussing the question, what Latin colonies afforded the model, according to which the Junian Latins were excluded from intermarriage.

I must observe here therefore by anticipation, that, a full century before the consul Junius Norbanus introduced the franchise of the Latin freedmen, the old Latin towns which retained their ancient rights, and the colonies which together with them formed the Latin nation[158], had all received the full freedom of Rome, and had become *municipia*. After the Julian law, there were no Latin colonies, till a year later a new *Latium* was introduced[59]. The country on the north of the Po had become filled with a mixt population, speaking Latin, and composed of Italians and natives who had changed their Celtic character. The towns were still faithful, but were bringing forward pretensions. Therefore, by a law of the consul Cn. Pompeius Strabo, they were raised to the rank of Latin colonies, though no colonists were sent to them[60]. The peculiarity of this franchise was, that persons who filled magistracies and offices of honour in such towns, acquired the Roman franchise thereby, and they alone[61].

158 All the Latins are comprehended under that single name by Polybius, II. 24: and under it they all obtained the full franchise at the same time by the Julian law, the colonies, no less than Tibur and Praeneste.

59 *Latium* in the sense of *jus Latii* (which latter phrase occurs in Asconius, in the Argument of the speech against Piso), is given by Gessner, but without any instance; probably on the authority of Strabo, IV. p. 187. a: ἔχουσα τὸ καλούμενον Λατεῖον (read Λάτιον), and of Appian, Civ. II. 26: τόδε γὰρ ἰσχύει τὸ Λάτιον: passages which, though in a forein language, would be amply sufficient: we may now add Gaius to them: see note 163.

60 *Non novis colonis, sed veteribus incolis manentibus:* Asconius in the same place. Without any *deductio* therefore, contrary to the very essence of the definition quoted in note 80: which may certainly be considered as more ancient.

61 Strabo IV. p. 187. a. Appian, Civ. II. 26. Gaius, I. 96.

Comum and Nemausus are expressly mentioned as colonies with this privilege[162]. From this time forth many towns and cantons were raised to this degree: which, compared with the old Latin franchise, was termed, and with great propriety, *the lesser Latium*[63]. That these

Asconius as above: for in the senseless words, by which Sigonius was justly offended, *ut petendi magistratus gratia civitatem Romanam adipiscerentur*, *gratia* is a corruption introduced by an editor; and doubtless does not exist in the old printed editions, any more than in the Florentine manuscript. This suggests the correction, *ut petendis magistratibus civ. Rom. adip.* Just before these words the reading of the same manuscript, *possent hinc*, leads us almost as certainly to write *possiderent*, instead of the corrupt text, *possent habere:* and further on a very unlucky arbitrary innovation has introduced the *jus Italiae*, of which the genuine copy has no trace, and along with it the fancy that there were Italian colonies, which we may hope will be totally dissipated ere long. This passage, both when Asconius wrote, and when a presumptuous emender undertook to correct it, was indeed under the influence of some unpropitious star. The Roman author at this unlucky moment unquestionably fancied that the franchise of the old Latins was the same with this new *Latium:* but it must be observed, that he also expresses his surprise how Cicero could term Placentia a *municipium*, when it had been founded as a Latin colony; that is to say, Asconius himself knew it as a military colony. This learned writer, who was so familiar with all the events of Cicero's public life, was so confused in his notions of the old constitutional law, as not to observe that, from the Julian law to the time when the triumvirs planted a military colony there, Placentia could be nothing but a *municipium.* To judge how little even a large share of knowledge on particular subjects and of good sense in an author can bind or warrant us to rely implicitly on every opinion he may express, as to a state of things that has quite past away, one should have observed how completely a lapse of fifty years or less will suffice to efface it from memory.

[162] Strabo and Appian, as quoted above.

[63] If we merely allow the obvious reading of the manuscript its fair and full weight, the passage in Gaius, I. 96, after some lines, which unfortunately must remain for ever illegible, runs clearly as follows: *magistratum gerunt, civitatem Romanam consequuntur: minus Latium est, cum hi tantum qui vel magistratum vel honorem gerunt* (for instance the *Seviri Augustales*, the *Flamines* of the Emperors, and so on) *ad civitatem Romanam perveniunt.* This must have been

Latins had no right of intermarriage, being chiefly barbarians, or at best a mongrel italianised race, will as easily be understood, as the motive for withholding the same right from the freedmen, whose threatening influx called for some barrier to check its progress. On the other hand an enlargement of the *commercium* was welcome, and accorded with the spirit of various regulations designed to raise the price of land in Italy.

A law which regarded Latin citizens as foreiners, and applied to them the principle that the child follows the condition of the baser parent[164], can only have related to this inferior *Latium*. If the *Lex Mensia* contained such a provision, one limit for its date is determined.

opposed to a *majus Latium*, described in the lost lines, perhaps in some such language as this : *Majus Latium vocatur, cum quicunque Romae munus faciunt, non hi tantum qui* mag. gerunt etc.

[164] Gaius, I. 79, with Goeschen's note : the past tense refers merely to the date of the law, which, in the only passage where it is mentioned, bears the singular name of *Lex Mensia.*

THE LEAGUE WITH THE HERNICANS.

THE league of Rome with the Latins, and that with the Hernicans are parted by an interval of seven years, and by events which our history must not pass over: but it would show a slavish adherence to the order of time to let the internal connexion between the two subjects be broken by this separation. The same Sp. Cassius concluded both the treaties as consul; and the tenour of both was precisely the same[165]. The alliance was common to the three states; and they were all placed on an equality: so that, when their forces took the field conjointly, a third of the spoil and of the conquered territory fell to the lot of each[66], and each took an equal share in the colonies they sent forth[67]. Now, for the subsistence of this equality, it was necessary there should be no markt disproportion between the allies in power, even if they were not exactly balanced: hence the Hernicans must have occupied a far wider territory than their later history assigns to them. They, like the Latins, were overpowered by the Volscians and Aequians, who conquered a part of their towns. Some of these were recovered, as was the case with Ferentinum[68]: others

[165] Ἀντίγραφοι τῶν πρὸς Λατίνους (συνθήκων). Dionysius, VIII. 69.

[66] Dionysius, VIII. 77: Τὸ ἐπίβαλλον ἑκάστοις (of the three states) λάχος: 76. Hence the Latins were entitled to a third of the booty: Pliny, XXXIV. 11. See note 72.

[67] Above, p. 42. [68] Livy, IV. 51.

may perhaps have been destroyed; others, when peace was concluded, and the possessions of the parties were secured by treaties, may have remained in the hands of the Volscians. Among these towns we may reckon Trebia, which is said in the legend to have been taken by Coriolanus; a statement amounting to evidence that it had fallen into the power of the Aequians. Its name does not stand in the list either of the Latin or of the Albian towns[169]; and its very situation makes it extremely improbable that it ever belonged to the Latin state. But it may have belonged to the Hernicans, if there was a time when they bordered on the Marsians, from whom, as being the nearest Sabellian people, they are said to have derived their origin. Their connexion with their parent state cannot always have been interrupted. The imperishable hill-fortresses, founded by an earlier race of inhabitants, and occupied in remote ages, like Latium and the Tyrrhenian coast, by Pelasgians, can never have been taken by them by a sudden assault, to which they would have had to open a road through the territories of the Ausonian tribes, closing upon them as soon as they had past. It is manifest that the Aequians must have conquered the highlands from them, and thus separated the Sabellian states in this quarter from each other.

That the towns of the Hernicans, which rose against Rome in 443, must have been more in number than Anagnia and the four others mentioned by name, was inferred by Cluverius from Livy's expression, that, save Verulae, Alatrium, and Ferentinum, all the Hernican cantons declared war[70]. To help us in conjecturing

[169] Vitellia however, which is mentioned by the side of Trebia (Livy, II. 39) among the conquests of Coriolanus, was an Albian township: see Vol. I. note 570.

[70] IX. 42. Concilium populorum omnium habentibus Anagninis, praeter Alatrinatem, Ferentinatemque, et Verulanum, omnes Hernici nominis *populi* (not *populo*) Romano bellum indixerunt. Frusino joined them: Livy, X. 1.

what their number was when complete, we find a clew in the discovery of that which determined the internal division of all the Sabellian states. For there can be no doubt that this division also was regulated by some fundamental number, whether three, as among the Romans, or some other, which was multiplied either by itself, or by ten, for the sake of further subdivisions. Such forms can never be accidental: they are a law, like the Dorian music: they contain the evidence of their own truth. The Sabellians differed from the Latins in this respect, just in the same way as the Ionians from the Dorians: their regulative number was four.

This appears in the military system of the Hernicans, and of the Samnites. The cohorts of the former numbered four hundred men[171]; those of the Samnites just as many[72]: and in the amount of their regular army, sixteen thousand[73], the same number appears twice over: there are four legions, each of four thousand men[74]. So that the four thousand Samnites sent to defend Palaepolis[75] were just a legion: the statement of this number is not derived from any record of the amount of the auxiliaries; but the annalists were still familiar with the complement of a Samnite legion. It is less certain indeed, but still highly probable, that the eight thousand men under Numerius Decimus, when he wrested the victory from Hannibal at Larinum[76], likewise mean two legions.

The Marsian confederacy contained four states*. That

171 Livy, VII. 7: Octo cohortes quadringenariae.

72 Livy, x. 40: *Viginti cohortes Samnitium (quadringenariae ferme erant):* the particle *ferme* was added by the writer, who found the language of his earlier authorities more precise than he thought himself able to warrant; just like Dionysius in the passage quoted in Vol. I. note 1228.

73 That of the *legio linteata:* Livy, x. 38.

74 So that those 20 cohorts were 2 legions.

75 Livy, VIII. 23.

76 Livy, XXII. 24.

* See Vol. I. pp. 100-102.

the Samnite was made up of the same number, is almost demonstrated by their army's consisting of four legions. For, though the Frentanians at the period referred to had separated themselves from their confederates, the Caudines, Pentrians, and Hirpinians, still the fundamental form may have been preserved by the substitution of a new canton[177].

These constituent numbers, when once recognized, are such sure guides, that I have no hesitation in assuming that every independent Sabellian people, and consequently the Hernicans, were divided into four tribes: and this I conceive to be indicated in their case by the thousand colonists sent to Antium[78]. Here four hundred Hernicans would represent the four Sabine tribes, as the three hundred Romans did the three tribes of the houses; and the three hundred Latins the three decuries of their towns. Thus far I feel confidence: but it is not without overstepping the line, beyond which a magical charm hovers over the adventurous inquirer, and threatens to bewilder his senses, that one may conjecture that the number twelve, which recurs so frequently in Roman institutions, was composed by multiplying together the fundamental numbers of the Latins and Sabines, who were united in the nation: and possibly the same thing may have happened in Attica, with respect to the Ionians and Cranaans. This may have been the reason why the institution of the year of twelve months was ascribed to Numa, after the union of the two states: though such a year must have been in use from the first; nor can it ever have been superseded by that of ten months.

I return to the plain ground where I feel at home,

[177] See above, p. 20.

[78] *Antiates, mille milites,* in Livy, III. 5, is assuredly nothing more than the echo of a statement that there were a thousand colonists at Antium. The whole share of the Hernicans was not a third larger than that of each of their confederates; but each Hernican received only three fourths of the portion allotted to each Roman or Latin.

and breathe freely. It might fairly be questioned whether the Hernicans had forty towns, or sixteen. But the number must have been one of these two: and the statement that forty-seven towns took part in the Latin Holidays[179] is decisive in favour of the latter. It is not equally easy to ascertain whether Anagnia was included among the sixteen; or, whether they stood in the same subordinate relation to that rich city[80], as the thirty Latin towns did to Alba. In this light it appears in the Fasti, in the triumph of Q. Marcius Tremulus, by the side of the other Hernicans. It is impossible to guess whether the author, whom Dionysius followed in recording the number forty-seven, combined Rome, the thirty Latin, and the sixteen Hernican towns in one sum, or meant to state how many appeared on the Alban mount along with Rome.

Anagnia is clearly designated as the capital of the nation, in a tradition apparently of very high antiquity; where it is said that Laevius Cispius of Anagnia commanded the Hernican auxiliaries who marcht to protect Rome, probably against an assault from the Sabines, while Tullus Hostilius was lying before Veii, and who encampt on one of the two hills of the Esquiline, before they were cleared or built upon, as a Latin army did on the other[81]. So ancient was the alliance of the Romans conceived to be with this people also, in which the Tities recognized their countrymen, as the Ramnes did theirs in the Latins. They too, like the Latins and the Tyrrhenians on the coast, fell subsequently under the dominion of Rome;

[179] Dionysius, IV. 49. The Volscians of Ecetra and Antium are mixt up with them merely through a confusion of the isopolitan and federal relations. In the reign of Tarquinius no Volscians were to be found at Antium, and scarcely at Ecetra.

[80] Dives Anagnia: Aeneid, VII. 684.

[81] Festus, Septimontium, from Varro. They are the hills on which the churches of S. Maria Maggiore and S. Pietro in Vincola stand.

and they too shook off her yoke. Both as confederates, and as subjects, they too were connected with Rome by the isopolitan franchise: and if it was by the accession of the Sabines that the numbers in the census were raised between 246 and 256 from 130000 to 150700, it must have been the separation, not merely of the Sabines, but of the Hernicans also, that reduced them to 110000 in 261, though the Latins had been recovered. Through ignorance and the ambition of rhetorical display it has been maintained that the league of Cassius, which in fact only renewed an ancient franchise, contained an entirely new relation, and one in which the highest boons were inexcusably lavisht[182]. Livy's guides must have been better informed; for he has not a word of the sort. On the other hand the stipulation, that the Hernicans were to have a third of all land conquered in future, is misinterpreted in him to mean, that no more than this part of their own territory, or at least of their domain, was left to them, two thirds having been confiscated[83]. For he deems it certain that the league was a treaty of peace at the end of a war: and Dionysius even enters into a circumstantial relation of the campaign. This assuredly deserves no manner of credit: it is far more probable that the war is a mere fabrication, devised from the notion that the league was a treaty of peace, and from a misunderstanding of what was reported of its contents with regard to the division of conquered territories.

The danger with which the Romans were threatened from the Volscians and Aequians, made them willing to secure a bulwark by fair concessions. On the other hand the Hernicans and the Latins behaved like staunch friends in remote wars, with which they had no personal concern; because they could count on succour from the Romans, and were acknowledged by them as their independent confederates.

182 Dionysius, VIII. 69, 77. 83 Agri partes duae ademtae: II. 41

THE WARS WITH THE VOLSCIANS AND AEQUIANS, DOWN TO THE END OF THE VEIENTINE WAR.

The incessant wars with these Ausonian nations, which for more than a century occur almost every year, induced Livy to express a fear lest, as he could not write of them without weariness, he should excite a like feeling in his readers[184]. How much more reason then has a foreiner to expect this, living eighteen hundred years after, with very few among his contemporaries who reflect that the glory of Arpinum and its sons belonged to the Volscian name, or who are familiar with the noble hills, the scene of those wars; and none who take interest in them from any of the feelings connected with ones birthplace! Hence the endless uniformity of occurrences, few of which are even distinguisht by the mention of the spot where they took place, and which look like mere predatory inroads, passing away and perpetually recurring without any result, must to us be intolerably tedious. But this appearance of intrinsic insignificance has only been occasioned by the dishonesty of the Roman annalists, which has studiously thrown the conquests of these nations into oblivion; as their narrowness of mind has the wholesome and politic treaties with them, at which the vanity of the later Romans took offense. If any Roman, sprung from a Volscian municipal town, had been

[184] VI. 12.

led thereby to seek after native chronicles, he would have found the names of great men in them, such as Cicero says, and surely not at a venture, his forefathers could boast of as well as other nations[185]: and this history, now so unattractive, might then, in spite of its narrow stage, have excited no less interest than any other, first by the splendid exploits of its early ages, and afterward, when fortune turned, by the unwearied resistance maintained for so many years. To reproduce the image of such a history is impossible. No names, but those of Attius Tullius, Vettius Messius, and Gracchus Coelius, have come down to us: and their memory has in part been defaced by an unworthy spirit of hostility. Their victories have been expunged: the conquests which could not be totally concealed, have been transferred to a stranger. The honour of which the chiefs have been robbed, we cannot restore to them: but we may acquire a general notion of that which is due to the people.

In a history of Rome it is the more necessary not to pass over the Volscian wars, because by them the power of the Latins was destroyed, and the remnant of the nation were compelled to seek safety in a state of dependence upon Rome: so that they were the means of raising up the Roman state from its fall after the banishment of the kings. But repeating the statements of the annals, full as they are of misrepresentation and falsehood, cannot teach us the nature of those wars: we must view them in masses as they combine in the distance. When we take such a view, they divide into four periods.

The first goes down to the peace with the Volscians in the year 295. During this the dominion of the two Ausonian nations encroacht upon Latium, and, though they were repulst from Antium for a while, at length reacht its highest pitch. The chief part of this period, envelopt in obscurity, and affording us but scanty information

185 De re p. III. 4.

on a very few definite events, is comprised in the present section. The second period extends from the peace of 295 to the victory of the dictator Aulus Postumius Tubertus. During this the two nations kept possession of the territory they had conquered: but the league, to which they owed their strength, was dissolved, till the breaking out of the war which was decided by that battle, and even then was only reestablisht between the Aequians and Ecetrans. Before that war, Rome had been on terms of amity with the latter, as well as with the Antiates, though this amity had not always been undisturbed: with the Aequians her relation had not been pacific, and frequently she had been at open war. During the third period the Antiates continued on an amicable footing with the Romans, who were continually gaining ground upon the other western Volscians and the Aequians, until Rome fell by the hands of the Gauls. The fourth period embraces about thirty years. The Aequians sink under the same storm which overthrew Rome: the Antiates, after seventy years of friendship, abandon the Romans, and, along with the other Volscian towns in those advanced parts, join the Latins; and they come to an end by being incorporated partly with the Latin state, partly with the Roman.

I am far from entertaining a doubt that the second Tarquinius waged war, and victoriously, against the Volscians: for the Auruncian race had already been pressing forward on the side of Latium. The destruction of Suessa Pometia however, if we must suppose it to be the same Pometia which is spoken of in the times of the republic, is a fable[186]; just as much so as the story of the enormous

[186] I almost doubt whether there ever was a town called *Suessa Pometia*: see Vol. I. p. 514. The only thing really in favour of its existence is the name of *Suessa Aurunca;* where the epithet seems to imply that there was another *Suessa*, from which this was distinguisht: but, if the adjunct was an adjective, it should be *Pomptina*. The form of the name would infer that two towns had been

treasures taken there. The founding of Signia, and the sending a colony to Circeii, both which measures unquestionably were not ascribed to the last king without historical grounds, are evident indications that some enemy's frontier was not far off: and it may have been with the view of obtaining protection, that Terracina, which was also included in the Roman kingdom, submitted to a state of dependence. That it was still a Tyrrhenian town at the time of the treaty with Carthage may be reasonably conjectured from its union with Rome, as well as from its not bearing its Volscian name of Anxur. On the downfall of the Roman power however immediately after, it must have fallen into the hands of its conquerors; to whom the two Alban colonies of Cora and Pometia had already surrendered in 251[187]. These conquerors are called Auruncians, the name given at the beginning of the fifth century to the tribes of the same race on the lower Liris: and Campania was mentioned in the chronicles as the home of those Auruncians with whom the Romans came into conflict before the insurrection of the commonalty[88]. The war in which those conquests were wrested back from them for a while, occurs twice over in Livy, under the years 251, 252, and 259: nay, if the

united into one, much as Laurolavinium was under the emperors, but that in this case, according to the usage of very early times, the two names were combined together without undergoing any modification, or being connected by a particle.

[187] Surely nobody will feel any scruple at the phrase *ad Auruncos deficiunt*, in Livy, II. 16. Even if the event had been much more recent, a Roman might have been led to speak in the same way, by the notion that nothing could excuse a city belonging to Rome, if it did not choose to perish rather than open its gates to the enemy. That the towns which Livy in the same passage calls Latin colonies were Alban ones, has been shewn above, p. 21.

[88] Dionysius, VI. 32: Τὰ τῆς Καμπανῶν χώρας πέδια. There is the less reason for confining this name to the district of Capua, according to the strictest Roman usage, since the Greeks called all the Oscans Campanians.

matter be lookt at closely, it must be allowed that the two campaigns of the earlier war are also in fact one and the same, placed by one set of annals in 251, by another in 252[189]. The only historical facts to be extracted from this confusion are, that the two places were reconquered, and Pometia destroyed: which is confirmed by its not appearing among the Latin towns in 261, while Cora does so. Thus much too is not to be questioned, that when the town was taken by storm, three hundred men were beheaded. These men in two places are called hostages, in a third Auruncian chiefs of the town[90]. If they were hostages, the old inhabitants must have incurred the suspicion of the Romans beforehand, and, though they had been forced to give pledges of their fidelity, have revolted notwithstanding: even in this case it might be shewn that the number is not to be viewed according to our notions on such points. It is incomparably likelier however that these victims, whose number is just equal to that of a Roman colony, were an Auruncian one planted there to maintain the town: which the Romans destroyed, because it was lying waste, the ancient inhabitants having been carried away or massacred. For surely that act of cruelty is unintelligible except as an act of revenge: and from the condition of several places which I shall soon have to mention, we may clearly see with what ravages the Volscian conquests were attended.

Nobody will doubt that these gained ground during the Latin war: and we may confidently adopt the statement

[189] Livy, II. 16, 17, 22, 25, 26. The people, who in the version with the earlier date are called Auruncians, appear in 259 as Volscians. Dionysius had the caution to reject the former story. One has only to compare the accounts in Livy under the years 251 and 252, to see that it is the same massacre. A similar duplication will be spoken of in note 460.

[90] 300 *obsides* in the years 251 and 259: II. 16, 22: *principes* in 252: II. 17.

in Livy, whether drawn from conjecture or tradition, that the Latins preferred a peace with Rome, by which at first they did not gain the ends of the war, to an alliance offered them by the Volscians[191]. The only means the latter had of enlarging their territory, except by taking Antium, was by encroaching upon the Hernicans or the Latins: and the compensations they may have promist to make them at the expense of the Roman state, must at best have been extremely uncertain. When peace was reestablisht, the confederates did not neglect to fortify their frontier. Signia must have been lost during those years, when Rome, being at war with Latium, was unable to send any succours through that country: for it was founded anew in 259; and a fresh colony was sent thither[92]. Now the territory which was reconquered, had been annext to Ecetra[93]; a town which, lying between Signia and Ferentinum[94], seems to have been occupied about that very time by a Volscian colony and thenceforward served as the place of congress for the newly formed Volscian state on the skirts of the hills[95]. The constitution and national council of that state, we are to suppose, were just like those of the Latin towns. The Ecetrans may have applied for aid to their remoter kinspeople: or else a tribe of Auruncians, who had been driven northward, appeared uncalled for in Latium, and

[191] II. 22. [92] Livy, II. 21.

[93] Livy (II. 25) and Dionysius (VI. 32) say that the Ecetrans were deprived of their domain: it was assigned *κληρούχοις εἰς φυλακὴν τοῦ ἔθνους ἐκπεμφθεῖσι*: the Auruncians *ἠξίουν* (*τοὺς Ῥωμαίους*) *τὴν φρουρὰν ἀπαγαγεῖν·* such a *φρουρὰ* means a colony in a fortified city (see note 81), not scattered setlers. The connexion between these events as given in the text must be made out by conjecture, but is no way doubtful.

[94] Livy (IV. 61) speaks of a battle that took place between Ferentinum and Ecetra.

[95] That it was the place of the Volscian assemblies appears from Dionysius, VIII. 4, and from Livy, III. 10: its situation from Livy, VI. 31: *laeva ad montes Ecetram pergunt.*

threatened the Romans with war, unless they evacuated that territory. They were defeated near Aricia by the army which the consul Servilius had formed, chiefly of persons pledged for debt. But they did not march out of the country: nor was Velitrae retaken from them till the next year, 260. The notion that this town, which we also find in the list of the thirty Latin ones, was originally a Volscian settlement, is as complete a mistake as the same notion with regard to Antium. Had such been the case, Cora and the towns beyond could not possibly have belonged to Latium. The source of this errour is, that subsequently these became Volscian towns, and continued so till the whole country roundabout fell under the dominion of Rome. That the citizens of Velitrae cannot have been of a forein and hostile race, is clear from the desire felt at Rome to repeople that town after its desolation with Roman and Latin colonists; a measure adopted in 262. The story that only a tenth of the inhabitants were then remaining, does not look like a fabrication: but that a pestilence should have made such havoc in a single town far away from the seacoast, without spreading over Rome and Latium[196], is no less monstrous an absurdity, than that the Volscians should have sent an invitation to their enemies, instead of to the kindred race of the Auruncians, whose coming was spoken of even in the Annals. It was evidently by the ravages of war, that the population of Velitrae was swept away, first when it was taken by the Volscians, and then at its recapture. A like fate must have been experienced by Norba; where a new colony was settled in the same year, 262, with the view of defending the Pomptine region[97].

None of these fortresses appears in the list of the

[196] Dionysius, VII. 12, 13, compared with Livy, II. 31; who relates that Velitrae was taken, and that the colony was sent thither after a decree of the Romans.

[97] Livy, II. 34; *arx in Pomptino*: whence it appears that the Ager Pomptinus was the slope of the hills above the marshes.

places which Coriolanus and the Volscians are said to have taken, in the campaign placed by our historians, without any variation or scruple, under the consulship of Sp. Nautius and Sex. Furius. One should have expected that this campaign would not have escaped that scepticism, which denies the credibility of the history of the first four centuries; that on the contrary it would have been brought forward as a manifest confirmation of that sentence: but so superficially have those inquiries been carried on, that this is not the case. Everybody has overlookt how totally the two historians differ with regard to the towns taken; which in Dionysius follow one another in an order pretty nearly the inverse of that given by Livy; while each names several places, about which the other says nothing[198]. Now, according to the very principles on which that general sentence of condemnation was founded, contradictions of this sort might have led to the rejecting of the whole story as a fable: and in fact nothing can be less reconcilable with truth than such discrepancies; which might not indeed startle us very much in an account of Alexander's Asiatic campaigns, but could never have found place in a history where no other year furnishes the taking of more than a single town. When compared with the incredible account, that day by day one fortress after another should have surrendered, without any attempt on the part of the Romans to stop the conquerors, or even to raise an army,—that, on the bare approach of the enemy, the senate and people should have abandoned all thought of defending the city,—

[198] In Livy, II. 39, Satricum, Longula, Polusca, Corioli, Mugilla, Lavinium, Corbio, Vitellia, Trebia, Laviei, Pedum: in Dionysius (VIII. 17-36), Toleria, Bola, Lavici, Pedum, Corbio, Caroentum, Bovilla, Lavinium (of which he only says that it was besieged),—then, during the thirty days respite, Longula, Satricum, Cetia (?), Polusca, the Albietes (in this name the word *Albensis*, which was the epithet of the Poluscans, lies disguised, probably through a blunder of Dionysius), Mugilla, Corioli.

when compared with these accumulated incredibilities, the strangeness of the story that Coriolanus reacht a quiet old age, is of little moment. This is so undeniably evident, that, were any persons still to be found in our days who put implicit faith in the common history, even they might without much difficulty be drawn to confess that the conquest of several years must have been crowded into a single one, and the defeats sustained by the Romans supprest. Not to mention however that even this solution leaves a portion of those absurdities subsisting in full force, unless we choose to take up with mere evasions, little is thus effected towards explaining the history of which that war forms a part. Nobody will deem it conceivable that the Volscians should have evacuated the towns they had conquered; even if the army in obedience to its oath had entered upon its retreat as it was commanded. Nor is it less impossible that those towns, from Circeii to Bovillae and Lavinium, should have been in the hands of the Volscians before the third consulship of Sp. Cassius. For if so, there could never have been any question about an agrarian law. The public domain must have disappeared, had the Roman frontier been contracted to within five miles of the city: as we see in aftertimes that, when a district in dispute had been occupied by victorious foes, the dissensions about the agrarian law were husht. The Latins, being confined to the few towns about the Alban hills, which a long time after were the only remaining ones of their confederacy, and the Hernicans, being equally reduced, and surrounded by victorious neighbours, could not have sent any succours in the Veientine war. If these conquests were achieved in 266, how came the Aequians not to encamp on the Algidus till 25 years after? as they did thenceforward every year. How could the Romans take Antium twenty years after, without our finding a single trace of their having previously reconquered the places in front of it?

I will not lay any stress on the inconceivableness of

the story that the Romans waged war against the Hernicans in the year after such a humiliation: for I do not much believe it. Nor will I answer for the historical truth of the statement that the corn, which Coriolanus proposed should not be distributed to the commonalty, except as the price for the sacrifice of their liberties, was the present of a Siceliot prince[199]. For here again a much more recent event, a largess of the first Dionysius[200], may have been transferred to an earlier age. If this circumstance in the tradition be wellfounded, we have to take into account that Gelo at that time was not yet ruler of Syracuse, which, like the other largest towns in Sicily, was free: and no reason can be devised why he should have conferred a favour on the Romans in those days; though the soverain of a maritime city might be led to do so by common hatred of the Etruscans[1].

[199] I do not at all doubt the senate's having had such corn: the only question is whether it was a present from Sicily.

[200] In the year 344, Ol. 94. 2, Livy, IV. 52, says *Siculorum tyranni:* but at that time Dionysius was the only prince in the maritime towns; and his was the name mentioned by the chronicles in the story of Coriolanus.

[1] Dionysius, who laughs at the anachronism committed by the unlearned Romans, is so sly in this place as merely to call Gelo the most eminent among the princes in the Sicilian towns (VII. 1); meaning the reader to infer on his own head that he was already soverain of his large kingdom. With regard to Gelo's history, we find two totally opposite chronological statements, which turn round Ol. 75. 2, as their hinge. That year, the archonship of Timosthenes, with one set of writers, of whom it is sufficient here to mention Diodorus, is the year of his death; with another set (see Corsini Fasti Attici, III. p. 170) the beginning of his reign at Syracuse. The latter statement is borne out by the weighty authority of the Parian Chronicle, which is extremely accurate on Sicilian affairs, and which is supported, with an immaterial difference, by the scholiast on Pindar: that scholiast is in the habit of using Timaeus; whom it is the more certain that the author of the Chronicle had before his eyes, inasmuch as his history ended at the very year from which the Chronicle reckons backward. The inversion is to be explained from the story,

The impeachment of Coriolanus for these detestable propositions is said to have given rise to the ordinance of the plebs empowering the tribunes, if any one disturbed them while transacting business with the commonalty, to impose a fine on him, for which he was to give security[202]. As this ordinance was a national law, it must have been past after the Publilian law of 283: nor can it have been much prior to 293, in which year it was put into execution for the first time against Caeso Quinctius[3]. The very form of the impeachment belongs to a state of things which does not appear till after the Veientine peace in 280: when the consuls, who had not fulfilled the enactments of the agrarian law, and soon afterward Appius Claudius, are accused before the court of the tribes, by which Coriolanus was condemned[4]. From the very outset indeed the tribunes must undoubtedly have been authorized to impeach any one who proposed the destruction of the solemn compact between the estates. But how could they make such a right good in those days? when, a few years after that in which the annals place the condemnation of Coriolanus, they

which gained credit, that the Greeks won the victories of Salamis and Himera on the same day: so that Ol. 75. 1 was to be included within Gelo's reign. But even on this statement the commencement of his reign at Syracuse falls about Ol. 73. 3, or 4: and Dionysius was aware that this did not tally with his comparative chronology, according to which 261 agreed with Ol. 72. 1: nor, if we correct it a whole Olympiad, is that enough. In the 73d Olympiad however Gelo was unquestionably prince of Gela: that he was so in the preceding one cannot be proved.

[202] Dionysius, VII. 17.

[3] *Hic primus vades publico dedit*: says Livy, III. 13. This was the very object of the law. See below, notes 523, 659.

[4] That this trial did not suit the time to which the impeachment of Coriolanus is ascribed, was perceived by Hooke, who wrote in a good spirit and with judgement, but never conceived the notion that it was possible to reduce the chaos of Roman history to order.

could not save the champion of their rights, or preserve the plebs from being robbed of its elective franchise. But if the transaction which brought on the ruin of Coriolanus, were to be placed twenty years later than in our histories, these difficulties would not stand in the way of our believing it: and we should then find a famine at Rome, under such circumstances as might induce a Greek king in Sicily to act with kindness toward the Romans. About the year 275 Hiero began to reign at Syracuse. He was ambitious of the glory of putting down the piracies of the Etruscans, and was all his life their foe. Thus the dearth in the year 278 occurred in his time[205]: and he had the same enemies as the Romans. Soon after arose a violent dissension between the orders, during which it is probable enough that a proposition like the one ascribed to Coriolanus, should have been brought forward in the senate: but the plebs was then sufficiently strong to punish any one who tried to do away the fundamental laws of the state. The same date agrees with certain points in the story, in themselves of no great moment, such as the hostilities against the Volscians of Antium, wherein Coriolanus distinguishes himself. That his offense, his punishment, and his revenge must have followed close on one another, would be a totally arbitrary assumption: between the first and the last at all events there may have been an interval of several years. Moreover, when we find that the Volscians obtained the isopolitan franchise*, and the restoration of a district that the Romans had taken from them, it cannot be doubted that these were the terms of the peace, which Coriolanus is feigned to have imposed; terms extremely well-suited to the year 295: whereas thirty years

[205] About Ol. 77. 4. The date assigned by Diodorus for Hiero's naval victory over the Etruscans (Ol. 76. 2) must be erroneous in the same manner as that of Gelo's death. It was probably dated by the years of his reign, the fourth of which would be just Ol. 77. 4.

* See below, note 581.

earlier, and supposing him master of all the country beyond the ancient frontier, it would have been absurd to talk about the restoration of conquered territory and towns to the Volscians, and the recall of the Roman colonists from them[206]. If we perceive in fine, that the list of his conquests is only that of a portion of those made by the Volscians, transferred to a Roman, whose glory was even flattering to the national vanity, all that remains to be done,—in order that the legend, being now referred to its proper date, may be freed from every absurdity, that it may harmonize perfectly with the traditions in the Annals, may form a complement to them, and infuse life into them,—is to explain how he came to war against his native city.

This explanation I reserve, until the story in its original form, the features of which are strongly markt, and still clearly discernible, is related in the place it belongs to: where it will appear, that it is not merely a genuine tradition from very ancient times, which might nevertheless be a bare fiction, but that it conveys a substantially faithful remembrance of a great man and of great events, a remembrance kept up for centuries in the nation, without the slightest doubt as to the reality of the facts, and connected with the history of the constitution and the laws. And this story would be nothing but an untenable tale, if its credibility rested on its belonging to that particular epoch, to which the traditional history attacht it.

An oral tradition gained a fixt place in the annals, when the name of its hero occurred in the Fasti. If this was not the case, it continued in a fluctuating state, unconfined by their limits, like that of Papirius Praetextatus*, and probably also that of Cipus†; or it was

[206] Ἐὰν ἀποδιδῶσι Ῥωμαῖοι Οὐολούσκοις χώραν τε ὅσην αὐτοὺς ἀφῄρηνται, καὶ πόλεις ὅσας κατέχουσιν, ἀνακαλεσάμενοι τοὺς ἀποίκους: Dionysius, VIII. 35.

* Gellius, I. 23.

† Ovid, Metamorph. XV. 565-611.

referred to totally different dates, as that of Curtius was to the years 310 and 385; or erroneous combinations and inferences led to its insertion in a wrong place: and thus it happened with that of Coriolanus. The source of the errour in this instance may be most satisfactorily discovered. In all countries there are legends concerning the erection of buildings regarded with reverence; and thus tradition connected a temple of Fortuna Muliebris, which lay four miles from the city on the Latin road, with that intercession of the Roman matrons, which the goddess presiding over providential dispensations had blest. It was overlookt, that this temple after all did not stand on the spot where Coriolanus must have received the mission: for as the tradition most distinctly related, he pitcht his camp five miles from Rome on the Cluilian dyke[207]; that is, on the ancient inaugurated boundary, which once separated the Roman territory from the Alban, and which he could not cross until the thirty-three days were over, and war declared[8]. Nor does Livy know of his having encampt in any other place. Dionysius indeed says he advanced a mile nearer during the last three days: but this is a sheer forgery, to bring him to the site of that temple[9]. It is very possible that the Roman women may there have celebrated the recollection of their successful entreaties by thank-offerings. The favour of the deity had been manifested on that happy day: and it was probably the nearest place of worship fitted for such a solemnity. Fortuna Muliebris however was not a deity first invented on that occasion, but must needs have been just as ancient as Fortuna Virilis; to whom a temple had been erected by Servius Tullius, and of whom she was the counterpart. Not, it would seem, that we are to look in this instance to that principle of Roman theology, which contemplated every deity under a twofold

[207] Dionysius, VIII. 22. Livy, II. 39.

[8] See Vol. I. p. 348.

[9] Dionysius, VIII. 36.

personality, as male and female: for it would probably not have hesitated to designate one of the ideas by the name *Fortunus*[210]. But Fortuna, or the power that limits the general laws of nature, with regard to our variable life, by the peculiarities of individual character, and by occurrences and conjunctures, is so different in its bearings on the two sexes, that each severally worshipt the power which ruled its destiny. The Roman religion seems to have enjoined that the sanctuary of that deity should be without the pomerium: for the temple of Fortuna Virilis lay also before the city. The choosing a spot so far off for the other may have been a mere chance. At all events, that it was no way connected with the embassy of the matrons, is proved by the nature of the worship there: from which, had it been so, widows would never have been excluded, along with such as married a second husband[11]: for it was the aged mother Veturia, who is evidently regarded as a widow, that softened her son's stony heart. Nay everybody must allow that she or Volumnia would needs have been the first priestess, and not Valeria: who is manifestly introduced as the suggester of the mission by a bare fiction, merely for the sake of explaining how she, and not one of the other two, came to be named in the books of the pontiffs as having filled that office. For beyond doubt the statement that she offered the first sacrifice on the ground on the calends of December, 267, when nothing but the altar had been erected, and that the temple was dedicated by the consul Proculus Virginius on the eve of the nones of Quinctilis 268, must have been taken from those books: Dionysius

[210] Such was probably the relation between Vertumnus and Voltumna; one of which names seems to be somewhat distorted. See Vol. I. p. 424.

[11] Let it not be objected that his mother and wife might follow the object of their love in his misery. Their eternal separation is evidently taken for granted: nor had they gone with him before.

expressly quotes them in relating the miracle which befell the image set up there by the matrons[212]. As soon as the date of the expedition of Coriolanus was supposed to be ascertained, by what was regarded as its undeniable connexion with Valeria's sacrifice, his previous story was distributed through the three years immediately preceding that in which he appeared before Rome: for the omission of the consular years 264 and 265 in Livy is not owing to a mistake: they were excluded by the Fasti which he followed[13]. Thus the exploits of Marcius before Corioli, and against the Antiates, were placed in 261; his misdemeanour in 262; his trial and banishment in 263. Corioli however in 261 was a party to the league with Rome, as one of the Latin towns, and so at that time can neither have belonged to the Antiates, nor been attackt by the Romans[14]: in fact Livy himself says clearly enough that the old annals made no mention of any war under that year. The tradition had recorded this enterprise without any date: when these occurrences were arranged in the Annals, it was necessary to place it before 262, since Coriolanus at his trial bore the name he was

[212] VIII. 56: Ὡς αἱ τῶν ἱεροφαντῶν περιέχουσι γραφαί. The ἱεροφανταὶ are the pontiffs: II. 73; compare Sylburg's index. This miracle, which is also told in Valerius Maximus, I. 8. 4, is remarkable as one among many proofs of the belief that, when an image was consecrated, the deity entered into it as into a body, and dwelt in it.

[13] To my mind this is proved by Sigonius in his excellent Chronologia Liviana: Drakenb. VII. 89. Should any one be unconvinced by him, at all events he must not impute the omission to a fault of the scribes.

[14] Such stories are perpetually made use of as the groundwork for building fresh ones on. Whatever may have been the real state of the case with regard to the declaration, by which P. Scaptius is said to have usurpt the waste territory of Corioli (Livy, III. 71), the statement that he was then serving his twentieth campaign was merely deduced from the assumption that the town was taken in 261: for a man who in 308 was in his 83rd year, must have been born in 226, and entered the legion in 242. Nobody in these days will try to bolster up an impossibility with trifling of this sort.

supposed to have earned by that achievement: so it was put in 261. The legend spoke only of Coriolanus: but it was inevitable that some annalists would call to mind, that a man, who had not the auspices himself, must have come into the field under those of some magistrate. Neither of the consuls in the year 261 had any expedition against the Volscians ascribed to him: but the name of Post. Cominius did not occur in the Roman record of the treaty with the Latins: and hence it was inferred that he must have been fighting against the Volscians, with Coriolanus under his orders[215]. So totally arbitrary is the structure of the current narrative. Along with it however one of the forms of the old legend has been preserved: for such is the account that Coriolanus mustered a band of volunteers, and marcht against the Antiates; which Dionysius, loth to let any story escape him, relates along with the common one[16].

The true history of the year 266 has been preserved in spite of this interpolation. After Livy has related the latter in its poetical fulness, he adds, with the brevity of the Annals, that, when Coriolanus had led his army back, the Aequians and Volscians under Attius Tullius[17] made another inroad into Latium. But the Aequians refused to

[215] II. 33: Nisi foedus cum Latinis monumento esset ab Sp. Cassio uno, quia collega afuerat, ictum, *Post. Cominium bellum gessisse cum Volscis memoria cessisset.* See above, p. 38, note 69.

[16] VII. 19.

[17] *Tullius* and *Tullium* is the correct reading of the best manuscripts of Livy; and *Tulli* (II. 35) is merely the old way of spelling the genitive. Zonaras too has Ἄττιος Τύλλιος, and Plutarch in his life of Cicero, only transposing the two names and with a slight mistake, Τύλλιος Ἄππιος. In that of Coriolanus he had Dionysius before his eyes, who, that a gentile name might not stand in the place of a proper one, wrote Τύλλος Ἄττιος. It is unlikely he should have known that the proper names among the Oscan nations were usually gentile names among the Romans; for instance *Pacuvius, Statius, Gellius,*—to cite such only as, like *Attius* itself, have become celebrated in literary history.

obey the Volscian general, and the two nations turned their arms against each other, while the Romans lookt on with joy[218]. This is the genuine record of what happened, made to fit in with the story by which it might easily have been wholly supprest: and this is also the reason why Attius was associated with Coriolanus as his collegue during the Roman war. On this foundation others went on building, who thought it perfectly natural that Attius should look askance on the elevation of a foreiner, and that the latter should have to expiate his mercy to Rome with his life.

This is a grievous wrong to a man, with regard to whom the sullen silence of the Roman chronicles has let nothing come down to us, except a general recollection that he had reigned with glory over the Volscians[19]; that is, as an elective king, such as we must suppose all those of the Italian nations to have been. That Cicero, where he says the Volscians had produced great men, had Attius especially in his eye, is the more probable, as he himself was deemed to belong to the same house[20]: and it cannot be accidental that his lifetime coincided with the encroachments of his countrymen upon Latium. The spleen of the Romans must not be allowed to defraud him of these laurels for ever, and to confine us to the

[218] II. 40: Rediere deinde Volsci adjunctis Aequis, etc.

[19] Βασιλεύσαντα λαμπρῶς ἐν Οὐολούσκοις; Plutarch Cicer. I. In his life of Coriolanus he has the same notion in his head, but only ventures to say: ἀξίωμα ἔχων βασιλικὸν ἐν πᾶσιν Οὐολούσκοις: c. XII. That is, he was checkt by Dionysius, who makes Attius a mere citizen of Antium; seeing, as undoubtedly he did well enough, how incredible it sounded that a king should have a collegue given him, and this collegue a forein exile.

[20] Plutarch Cicer. I. Cicero's own silence touching this supposed descent is no proof of its having been devised after his time. He may perhaps have been pleased with the thought of it; but his mouth was stopt by the unlucky reproach of being a foreiner, and by that of his acting the king at Rome; *regnare eum Romae:* see the oration for Plancius.

statement that his victory in that campaign had been frustrated by jealousy; and that he had deserved this disappointment for the artifice he used to excite his people to take up arms afresh against Rome.

The great Roman games were celebrated over again after the peace with the Latins, because previously during the war they had been interrupted by a sudden cry to arms[221]. The circus had already been hallowed by the procession of the images of the gods, when, before the contests began, a slave condemned to death was driven through it and scourged. Soon after the city was visited with a pestilence, and with monstrous births, and was haunted with spectres: and the soothsayers had no counsel to give. Amid this distress Jupiter appeared in a dream to a countryman, T. Latinius[22], and commanded him to go before the magistrates, and tell them, that the preluder had been displeasing to the god. Fearful of being treated with scorn by the haughty patricians, Latinius did not obey, and was taught by the sudden death of his son, at how dear a price the higher powers, when their anger is kindled, allow any to purchase the fearful honour of being entrusted with their secrets. A second time the god appeared, renewed his command, and threatened him with a personal visitation. Still the timid man could not pluck up courage, and so lost the use of his limbs by a severe stroke of palsy. Hereupon he told his story to his kinsmen and friends: they carried him on his bed into the forum, and thence by the consuls order followed them into the senate-house.

[221] Cicero (de Divinat. I. 26) tells the story in the very same manner with Livy and Dionysius. Macrobius (Saturn. I. 11) has different names, and places it just two centuries later: for CCCCLXXIV, the reading of the old editions and the manuscripts, has only an X too much. Here again we have a story, which at one time circulated without any connexion with the Fasti, or any fixt date.

[22] So we should read in Livy, instead of *Ti. Atinius:* the L slid from the name to the forename, and was changed into I.

Here, as soon as Latinius had announced his message, the sickness left him: he arose and walkt home stout and hale. By way of atonement for the desecration of the former games, they were repeated anew with greater pomp than ever before: and to highten their splendour the neighbouring nations far and wide were bidden to the spectacle. While they lasted there was a sacred peace. The Volscians, who, since the unhappy isssue of their expedition to Velitrae and into the Pomptine district, had laid aside their arms, came in especially large bodies. They had turned a deaf ear, when Tullius exhorted them to try their fortune afresh: he devised a stratagem therefore to rekindle the war, even against their will, and that of the Romans. He warned the consuls to beware lest his countrymen should do anything that might bring a curse upon them, and dissolve the peace irretrievably. The Roman magistrates in alarm forthwith issued a proclamation that every Volscian found in Rome after sunset would be treated as an outlaw. Indignant at this wanton insult, the strangers departed through the Capene gate, to meet the scorn of those who had staid at home. Their prince appeared in the midst of them, and inflamed their anger and revenge. At the fountain of Ferentina, where they rested for the night, he took their oaths to wreak this disgrace. A general meeting of the nation declared war. This event is placed in the year 263.

The conquest of Circeii, which is related under the year 265 or 266, apart from the others ascribed to Coriolanus[223], may have been one of the first exploits in this war. The Roman and Latin colonists were driven out; but their place was taken by Volscians[24]. So that the

[223] In Dionysius (VIII. 14) Coriolanus after this conquest dismisses his army till the next campaign.

[24] Dionysius (VIII. 14) states that no one was driven out, which merely refers to the old Tyrrhenian inhabitants: Livy says, *colonos*

colony there, which in the second Punic war forgot what it owed to the majesty of Rome*, was not the one founded by Tarquinius, but that reestablisht in 362: and I have no doubt that the same was also the case with regard to Norba. Only the founding of the colony settled there after the breaking up of the Volscian power is not noticed in history: perhaps it was the act of the Latins alone, during the independence of their state after its restoration, when Setia likewise received a colony[225]. Cora too seems about the same time to have become a genuine Latin colony: it is called so in 539† in a very different sense from that in 252. The situation of these places puts it out of doubt that they must all have been in the hands of the Volscians, when these were at the summit of their power. It is not necessary however to suppose that Attius Tullius must have taken them all, before he could open a passage to Antium. The chronicles which related, whether historically or after a tradition intelligently shaped, that auxiliaries from Antium fought on the side of the Latins at the battle of Regillus, and that afterward a Volscian army made its appearance[26], markt thereby that Antium was not then a Volscian town. The limits for the date of its surrender are the year 263, when Attius Tullius began to wage war, and, if the accounts in Dionysius deserve any sort of credit, 269, in which year and 270 the seat of the war against the Volscians lay in the Antiate territory[27]. Longula, it seems, at that time had not yet fallen before them[28]. Antium was occupied by a Volscian colony, which rejoined

Romanos expulit, which was a matter of course. With regard to the Volscian colony Dionysius expresses himself correctly: ὀλιγὴν μοῖραν ἐν τῇ πόλει καταλιπών· that is, colonists as a φρουρά.

* Livy, XXVII. 9.

[225] Livy, VI. 30. Velleius, I. 14.

† Livy, XXVII. 9.

[26] Dionysius, VI. 3, 14.

[27] Dionysius, VIII. 82, 84.

[28] Dionysius, VIII. 85.

their countrymen when the town in 286 went over to the Romans[229]. It is called a garrison, as are the colonies in the old Roman law[30]: and it is ascribed to the Aequians, who were still more powerful and formidable than the Volscians, properly so called, and are perpetually confounded with them; the latter being indeed their kinspeople, and undoubtedly united with them by an isopolitan relation, as they were at that time by an alliance in arms. Of the Aequians it is said that in 273 they besieged the Latin town of Ortona. I shall not go over the stories told of the successive campaigns against the two nations: the incessant pretensions to victories are ridiculous, when no one of them is said to have produced the slightest fruit. On the contrary an unprejudiced examination will convince us that the enemies of Rome were progressively gaining ground. The distracted state of Rome, the usurpation of the right to appoint the consuls,—whom the commonalty did not own as magistrates, so that at one moment the levies for the legions were obstructed, at another the troops sent into the field refused to serve,—and, to crown all, the Veientine war, weakened or intercepted the succour which the Latins and Hernicans lookt for from their confederates. Had there not been a truce at the time, these nations in 274 could not have aided the Romans against Veii: and they must again have relied on one in 279, when they helpt to bring the war to a decision. Meanwhile however their countrymen, who were left at home, were compelled to repulse an attack: the consul Sp. Nautius too came to their aid with a Roman Legion; and the combined armies revenged themselves by ravaging the enemy's country.

[229] They are represented as people without property, while those who had any staid behind: Dionysius, IX. 60: compare Livy, III. 4. They were no other than the Aequians φυλακῆς ἕνεκα παρόντες, who retire from the town: IX. 58: their property was confiscated: the old Antiates retained theirs.

[30] Above, p. 45, note 82.

But such advantages did not give a turn to the war; nor did they restore peace.

Even supposing that their other neighbours remained quiet, and that the Romans had only to oppose the Aequians and Volscians on different frontiers of their territory, yet this suspended one of the most important advantages, which had seemed secured by the division of the supreme power between two collegues, namely, that there should never be any interruption in the government, or even in the administration of justice. Thus there was still need of a deputy[231], to supply their places, as there had been formerly to supply the king's. But the change in the state of affairs led to changes with regard to this office also: and by detecting these, and examining the powers it was invested with, we shall add materially to the completeness and clearness of our history, and shall perceive the constitution unfolding itself, long before the period when its development appears to begin.

[231] Answering to the *statthölder* in the Swiss republics, who acts as substitute for the head of the state if absent or otherwise disabled. As the title of *prefect of the city* suggests, more especially to scholars, the notion of a subsequent and totally different office; and as the deputy, at least down to the decemvirate, did not bear that name, but that of *custos urbis*, the latter will usually be rendered by that of *warden of the city*.

THE OFFICE OF WARDEN OF THE CITY.

WHENEVER the kings were in the field, their place at Rome was filled by the first senator; who, like them, decided cases concerning property and occupancy, and provided against sudden emergencies[232]. Even those times of national glory cannot have been exempt from reverses: and when any danger threatened from within or without, the deputy was beyond all question authorized to raise and arm men, to convoke the senate, and to propose measures to the curies[33]. All this must have been included by Tacitus under his expression of providing against sudden emergencies. Of course whatever could be delayed was reserved for the king's return. In the accounts of the original nature and the changes of the constitution it was recorded that, when the senate consisted only of a hundred men, one of the Ten First was chosen chief of the whole body by the king, and entrusted with the wardenship of the city[34]: so that he

[232] Qui jus redderet, ac subitis mederetur: Tacitus, Annal. VI. 11.

[33] I have shewn in Vol. I. pp. 515, 516, that the pretended consultation of the four Romans against the Tarquins represents a decree of the senate enacted under the presidency of the warden of the city, Sp. Lucretius.

[34] Ἐξ ἁπάντων ἕνα τὸν ἄριστον ἀπέδειξεν ὧ τὰς κατὰ πόλιν ᾤετο δεῖν ἐπιτρέπειν οἰκονομίας ὅτε αὐτὸς ἐξάγοι στρατιὰν ὑπερόριον. Dionysius, II. 12. He perceives that this first senator and nine others differed from the remaining ninety, and were superior in rank; but he worries himself in trying to make the senate of a hundred tally

not only belonged of necessity to the decury of the interrexes; but the *Custos urbis*, as the deputy was called [235], was the first in that decury. Hence Sp. Lucretius, who filled that office, held the comitia for electing the first consuls as interrex[36].

The difference which originally prevailed between the first two tribes,—the houses of the Tities being held to be lesser ones,—was illustrated in the lawbooks by this among other statements, that after the death of Numa, the interrexes belonged to the greater houses, that is, in those days to the Ramnes[37]. That the person who is said to have been the first warden, and to have been chosen by Romulus, was of this order, is sufficiently attested by his name[38]. In like manner the account that Tullus Hostilius conferred this dignity on Numa Marcius is ample evidence of the opinion that, in the stage of the constitution designated by his reign, the houses of the Tities were set on a level with those of the first tribe, in such a way that they too had their places in the decury of interrexes, and one of them might be first senator[39]. These statements come most probably from Gracchanus. Another, which however may also have been

with three tribes and thirty curies, having no suspicion that this number refers only to the ten soverain curies. Lydus too says of the prefect, ὃς πρωτεύειν τῆς Ῥωμαίων γερουσίας φαίνεται: de mensibus, I. 19.

235 Lydus in the same place: προεστήσατο (ὁ Νουμᾶς) τὸν τῆς πόλεως φύλακα. De Magistrat. I. 38: ὁ ὕπαρχος—*custos urbis* προσαγορευόμενος. This accordingly is the genuine ancient title, used in the passages collected by Drakenborch (de praef. urb. p. m. 3), on account of its antiquity, as more dignified.

36 As interrex, Dionysius, IV. 84: as *praefectus urbis*, Livy, I. 60.

37 Ἐκ τῶν πρεσβυτέρων: Dionysius, III. 1.

38 Denter Romulius: Tacitus, Annal VI. 11.

39 Tacitus, Annal. VI. 11. Numa Marcius is mentioned by Plutarch as a Sabine, carried back however into an earlier age: Numa, c. V.

drawn from him, and which names Numa as the founder of this office[240], is very striking. Those who handed down these accounts, which they deliver in perfect good faith, must surely have been surprised that there should have been any occasion for it during a reign of unbroken peace. Now unless a blunder of some intermediate writer has substituted Numa Pompilius, as appointing to the office, for Numa Marcius who was appointed to it, the pontifical books may have intended to express by this, that, before the senators of the two tribes were placed on the same footing, the wardenship was reserved to one of the Ramnes, even under a Sabine king. There is no mention of any third person filling the office under the kings, and belonging to the Luceres, as the other two do unequivocally to the major houses. Nor indeed could there be any such, since the senators of the third tribe were so far below the others.

I know no passage in the writings of antiquity so useful in solving an enigma of perpetual occurrence, for which neither acuteness nor luck could otherwise have hit on the right answer, as Cicero's statement that the votes of the lesser houses were taken after those of the greater[41]. The scholar who has recalled to light the noble fragments of the treatise De Republica, has enabled us to interpret a number of statements contained in the two historians of Rome, very differently from the way in which they themselves understood them. In all ages there has been a prejudice in favour of elderly counsellors as wiser than the young. Such is the opinion of Thucydides: and Rehoboam's misgovernment is ascribed to the counsels of the young men that had grown up with him. Although the absolute validity of this proposition may be questionable, it is one of those which the two historians of Rome, intelligent as they were, could not but hold to be unqualifiedly true. Now since the words *majores* and *minores* from their ambiguity might be

[240] Lydus de mensibus. I. 19.

[41] De re p. II. 20.

so interpreted, that the *minores*, who appear in history with all the impetuosity and blind passion ascribed to youth, should be taken for young men, neither historian reflected that the meaning might possibly be different, or that the *senatus,* until its original constitution was totally changed, could not contain anybody who from his age did not belong to the *seniores:* in Livy the word *minores,* which was no longer in common use for *younger*, is changed into *juniores.* Light having now been shed on these points, we not only find Dionysius confirming Cicero's assertion in a particular instance, where he says that, after the *majores* had voted, came the turn of the *minores*[242]: but from another statement of his, which bears the same stamp as the rest of our most valuable accounts relating to the ancient constitutional law, we can discover that there was a further still more important mark of the inferiority of the lesser houses; of which Macer,—the writer we must suppose him to have copied in representing the discussions about pacifying the commonalty,—was not aware, since he put a speech into the mouth of Sp. Nautius[43]. Whereas they had merely the right of going over to the consul's proposition, or of rejecting it in silence. I say, of *going over to it:* for without doubt they were the *senatores pedarii*, a name afterward transferred, as was the lot of so many others during the numerous changes in the Roman constitution, to a totally different class, who appeared to have occupied the same relative station, namely, to those who had not yet held any curule office[44].

[242] vi. 69: Ἐπεὶ δὲ αἱ τῶν πρεσβυτέρων γνῶμαι τῇ Μενενίου προσέθεντο, καὶ καθῆκεν ὁ λόγος ἐπὶ τοὺς νεωτέρους—ἀνίσταται Σπόριος Ναύτιος.

[43] vii. 47: Τελευταῖοι (ἀνίσταντο) οἱ νεώτατοι, λόγον μὲν οὐδένα λέγοντες· ἔτι γὰρ ἦν δι' αἰσχύνης τότε Ῥωμαίοις τοῦτο, καὶ νέος οὐδεὶς ἑαυτὸν σοφώτερον εἶναι ἠξίου πρεσβύτου· ἐπεκύρουν δὲ τὰς κειμένας ὑπὸ τῶν ὑπάτων γνώμας.

[44] Gellius, iii. 18; who wonders without reason what can be the

A circumstance which may have had some influence in the transfer of this name, was, that a member of a minor house had the right of delivering his opinion, if he was a consular. For not only were they originally represented, like the plebs, among the four Romans*; but the consulship of M. Horatius, and subsequently that of Sp. Nautius, prove that there were consulars among them. Still even these did not stand on a level in point of honour with those of the major houses. The latter were the persons first called upon for their opinions in the senate; then the consulars of the lesser houses; and next the other senators of the greater: after which the common senators of the lesser houses were summoned in the last place to give their mere votes[245].

Now if we ask, who at the time we are treating of were the Ten First, out of whom the *princeps senatus* was chosen, thereby at the same time becoming warden of the city, it is clear that, whenever there were ten consulars of the greater houses, these must needs have been the persons. For it would be a contradiction, if they who were the first in the senate had not voted the first†.

meaning of the name, inasmuch as the voting in the senatehouse was often effected by the general division of the two parties. He did not reflect that it was well fitted to denote those who merely go over to an opinion, without having the right of speaking. The true meaning appears in the line he quotes from Laberius : *caput sine lingua pedaria sententia est.*

* See Vol. I. p. 515.

[245] Dionysius, VII. 47 : Πρῶτοι οἱ πρεσβύτατοι τῶν ὑπατικῶν (*consulares majorum gentium*), καλούμενοι κατὰ τὸν εἰωθότα κόσμον ὑπὸ τῶν ὑπάτων, ἀνίσταντο. ἔπειτα οἱ τούτων ὑποδεέστεροι κατ' ἄμφω ταῦτα (*consulares minorum gentium, senatoresque majorum*), τελευταῖοι δὲ οἱ νεώτατοι (*senatores e minoribus*), κ. τ. λ. If I were to engage in the thankless task of translating Dionysius, I would express the erroneous and vague thoughts which floated before him : but here again all I have to do is with that which he read, without understanding it.

† That they did so is expressly asserted by Dionysius in the

It is unnecessary, and indeed impossible, to determine whether the curies may not still have been represented in the senate, even if the single houses were so no longer, and whether each may not still have had the right of appointing a foreman of its decury: but consulars of the lesser houses, who rankt below the others, were by this very circumstance excluded from being the first. The Ten First, who concluded the treaty with the commonalty on the Sacred Mount, were all consulars[246]. The list of their names, which Dionysius inserted, must have been preserved in the solemn covenant: and it would be unreasonable to deem it less authentic than that of the embassadors who signed the peace of Westphalia. In the printed text indeed three names are wanting: but two of these have been restored from better manuscripts; and I shall soon mention the third. These consulars are found in the Fasti between 249 and 260. Of those prior to 251 none seems to have been living, except M. Valerius and P. Tubertus: Manius Tullius was dead: but at least five of the seven who are not in the list were alive[47]. Of the houses of which these seven were members, the Claudii, in spite of all their arrogance, are to

passage quoted in Vol. I. notes 784, 1345 : in that quoted in the last note he says the same thing of the consulars of the *gentes majores.*

[246] Dionysius indeed says, all but one (VI. 69). This exception does not refer to Spurius Nautius, but to the fictitious Manius Valerius, who was fabricated in consequence of the story that Marcus fell at Regillus : see Vol. I. p. 539. His name is found in the Vatican manuscript : he takes a great part in the debates : and he was not mentioned in the Fasti. The real person however was Marcus, the consul of the year 249.

[47] The list stands in Dionysius, VI. 69. Manius Valerius (according to the view taken by Dionysius) and Titus Larcius have rightly been added : only the latter should be inserted after T. Aebutius,—*Τίτου υἱὸς* (Ἔλουας, Τίτος Λάρκιος, Τίτου υἱὸς,) *Φλάουος.* The five who certainly were still living in 261, were Appius Claudius, who is repeatedly mentioned afterward—one of the consuls of 257, whether it be A. Atratinus, who was consul in 263, and dictator or

be counted among the lesser ones; and so must the Cloelii[248]. This is ground for concluding that the consulars who do not appear in the list, were of the minor houses; or that, even if they were of the major, they filled the inferior place in the consulship, which of right belonged to the Luceres. The name, *consul major*[49], implies that there must have been a *minor* opposed to him, both being denominated after the houses they represented. Now even if at the outset those of the Ramnes, as major in a narrower sense, set up a distinction between themselves and the second tribe in the consulship, still this vanisht in the exclusive contrast between the first two and the third. I will not hesitate to declare what is clear to my own mind, even though it should be denounced as a piece of hypercritical refinement. Before 253 M. Horatius is the only consul of the third tribe: so that at that time they did not fare better than the plebeians. In 253 they regained possession of the inferior place: but they were not treated with better faith than they themselves, after their union with their former oppressors, subsequently displayed toward the commonalty. More than once they were thrust out of the

interrex in 273, or M. Minucius, who was likewise consul in 263,—and Opiter Virginius, T. Virginius, P. Vetusius, who all three perisht miserably in 267. Thus if we pass over the earlier consulships of Sp. Cassius and Post. Cominius, the two consuls of the year, and one of those of T. Larcius, who likewise had been consul twice, there remain only Q. Cloelius, the consul of 256, and T. Vetusius, the one of 260, with regard to whom we have no means of ascertaining whether they were still alive.

[248] The Cloelii are mentioned by both the historians among the houses incorporated by Tullus (see Vol. I. note 916): and assuredly the Alban dictator Cluilius belonged to them. The Claudii, though they were Sabines, were not on that account admitted among the Tities, but took the place of the Tarquinii: Vol. I. p. 560. Appius is expressly mentioned as one of the νεώτεροι by Dionysius, VIII. 90. He also speaks of the νεοὶ τῶν Ἀππίου συγγενῶν: VI. 69: that is, the gentiles of Appius, belonging to the lesser houses.

[49] See Vol. I. note 1143.

place they were entitled to: in the year 258 T. Virginius was the collegue of one of those ten consulars, though Aulus, a member of the same house, was among them. But no member of the lesser houses could be *consul major:* and as in 262, 296, and 297, a Minucius is in office, with collegues whose houses are expressly enumerated among the lesser ones, while the name wanting among the ten must be that of one of the two consuls in the year 257, who were both alive, it must needs be that of M. Minucius[250].

I would compare the result of such inquiries to the uncovering of an old fresco painting that has been daubed over, where the colour is gone without leaving a trace, and nothing can be made out but parts of the outline, scratcht, as was the manner of the old masters, with the graver. We do not despise a discovery, which at all events enables us to guess what was once painted on the wall. While we are thus reviving the recollection of what has so long been forgotten, it is delightful to perceive that in the year after the first consulship of Sp. Cassius, the Luceres were again in possession of their right. It seems impossible that this can have been an accident. The change must have been brought about by that great man, who, soaring above the envious prejudices of his own class, as he did over those of his order and of his people, deemed it nobler to have a fair and undisputed share in a large inheritance partaken by many, than to incur hatred and enmity by seizing an unjust portion of a pitiful one, along with a few partners, powerless even to defend their usurpation.

The kings, whose authority lasted for life, may probably have bestowed the lieutenantship for the same term; as in aftertimes the dignity of first senator abode with a person who had once obtained it. Under an annual

[250] Those collegues from houses which were unquestionably lesser ones, were in 262 a Geganius, in 296 a Nautius, in 297 a Horatius.

magistracy however it is extremely improbable that this office should have had such a duration, which, if the person appointed lived to a great age, might be injurious; since the Romans no longer sent their armies to a distance, but were often called to take the field against hostile inroads. On this point we can only make conjectures: for the accounts in Dionysius concerning the appointment of lieutenants under the dictatorships of T. Larcius and A. Postumius belong to the circumstantial stories of the campaigns in those years, which we read in his pages, but which have no claim to the slightest credit. On the other hand we learn from a statement, which, although it has been distorted into nonsense by the silliness of the writer at whose hands we receive it, is yet unequivocal, and assuredly flows from a most authentic source[251], that in the twentythird year of the consulate, 267, the lieutenantship was elevated into a magistracy to be bestowed by election. The official name of the lieutenant was *custos urbis*, agreeably to the nature of his charge[52]. That this election was reserved for the curies, like that of the dictator, will the less admit of a doubt, since soon after they even usurpt the appointment of the consuls: and long afterward the censorship, which sprang out of this ancient wardenship, was conferred by their voice. Moreover it is related that the first elective warden, A. Sempronius Atratinus, was appointed by the senate[53]: which is tantamount to a

[251] We may assume that all such statements on the history of the magistracies adapted to the years of the consular era are derived from Gracchanus.

[52] Lydus de Magistr. I. 38: Τῷ εἰκόστῳ τρίτῳ τῶν ὑπάτων ἔτει εἰς τρεῖς μοίρας τὰ τῆς ἀρχῆς διῃρέθη, εἰς τοὺς ὑπάτους, εἰς τὸν τῆς πόλεως ὕπαρχον, καὶ τὸν δῆμον· καὶ οἱ μὲν ὕπατοι διῴκουν τοὺς πολέμους, ὁ δὲ δῆμος ἐστρατεύετο, ὅ γε μὴν ὕπαρχος τὴν πόλιν ἐφύλαττε, *custos urbis* προσαγορευόμενος. The text which he read spoke of the tribunes of the commonalty, where he speaks of the δῆμος.

[53] Ἡ βουλὴ ἐψηφίσατο — ἡγεῖσθαι τῆς δυνάμεως ταύτης Αὖλον Ἀτρατῖνον, ἄνδρα τῶν ὑπατικῶν. Dionysius, VIII. 64.

declaration that he was appointed by the curies. For in the first place the name of the *patres* was ambiguous; and besides in appointments by the curies the senate exercised a previous choice, which, so long as it was composed wholly of patricians, was absolutely decisive[254]. The eligibility was still confined to consulars: every prefect mentioned in history before the decemvirate occurs previously as consul[55]: but it was now extended to embrace the lesser houses, out of which the first elective warden came.

In the stormy years 292 and 295 the wardens appear as the heads of the commonwealth in the senate and in the forum. In this capacity history might have occasion to speak of them, if there was any commotion during the consul's absence: but it could never be led to mention their duty of dispensing justice and assigning judges. According to the original purport of their office, this charge ceast without doubt when the magistrate, whose place they were merely meant to supply, was at Rome. But after it became a magistracy bestowed by the burghers, it may soon have become the practice for the warden to hold a permanent tribunal, before which litigants appeared; an appeal to the higher tribunal of the consuls being left open to them. The same was the case with regard to the *praetor urbanus*. The notion that his office sprang out of that of the ancient *custos urbis*, is by no means an idle guess made by an ignorant foreiner in a

[254] Diodorus says that, until the citizens refused to give up the Fabii, there was no instance of their rejecting a proposition of the senate: XIV. 113. Everybody will perceive that this refers to the curies: for that there could not be such harmony even in those times between the senate and the people is clear as day. See below, notes 367, 1187.

[55] With the single apparent exception of P. Lucretius in Livy, III. 24; which name therefore, as Duker, perceiving the rule, judiciously remarks, ought to be changed into L.

late age[256]. After being merged, like the consulship, in the decemvirate, the two offices grew up again out of it, each under a new name: and we shall find the wardenship, sometimes alongside of the military tribunate, sometimes united with it, sometimes swallowed up in it, until it acquires a permanent character and a higher dignity, as the pretorship of the city. If the consuls were absent during the games of the populus, the prefect without doubt presided at them, as the pretor did subsequently.

In time of war the warden's province, beside the care of the city, was in case of need to levy civic legions, and to command them. These legions were totally distinct from the reserve, which was raised from the seniors between the 45th and 60th year, and from such as were excused from service in the field, although within the age bound to it[57]. For these seniors, like the Spartans of the same age, were by no means entirely exempt from field-service, and merely obliged to defend the city[58]: they were also led, if it was necessary, to encounter the enemy[59]. It even became the practice in case of emergency to raise a fourfold force, one body under each consul,

[256] Lydus de mensib. 19: Τὸν τῆς πόλεως φύλακα—ὃν πάλαι πραίτωρα οὐρβανὸν ἔλεγον.

[57] Tertius exercitus *ex causariis senioribusque* a L. Quinctio scribatur: Livy, VI. 6. So in 366 the παρηβηκότες: Plutarch, Camill. XXXIV.

[58] Both the historians are mistaken on this point. Livy says, I. 43: *Seniores ad urbis custodiam vt praesto essent:* Dionysius, IV. 66, still more positively: οὓς ἔδει τῆς νεότητος εἰς πόλεμον ἐξιούσης ὑπομένοντας ἐν τῇ πόλει τὰ ἐντὸς τείχους φυλάττειν. The *seniores* up to 60 are the μέχρι πέντε καὶ τεσσαράκοντα ἀφ' ἥβης.

[59] This is the case with the reserve collected by L. Quinctius: Livy, VI. 9: as it had been previously with that in 366 (Plutarch, Camill. XXXIV.), and was again in 378: Livy, VI. 32. Such too was the army sent under T. Quinctius in 290: Livy, III. 4. It is by a mere piece of carelessness that Dionysius (IX. 63) in direct opposition to the truth calls this army a select body of young men.

the reserve just mentioned, which formed the third, under a commander appointed for the purpose, and a fourth under the *custos urbis* in the city[260]: and so greatly must we contract the imaginary pictures of the enormous population of Rome, that we may look upon the four cohorts of six hundred men apiece, which were encampt before the walls in 292[61], as at that time forming the whole of the reserve; that is, a legion, without the cohort of substitutes,—the *accensi*,—for whom there was no occasion in it. The number of men fit for service in the classes and among the *accensi* of the military age was only sufficient for two legions. The seniors cannot have amounted even to half that number[62]: and among them many more in proportion must have been past over as disabled. The complement was filled up by men who had been let off from service within the military age. It will be easily seen that the constitution of such a legion was exactly like that of one of the juniors. On the other hand no centuries were formed by the civic legions, in which the proletarians and erarians,—the former

[260] The most frequent mention of this fourfold army occurs after the Gallic invasion: when however, there being a college of six supreme magistrates, the command was differently arranged. In earlier times, L. Valerius in 290 has the command within the city: T. Quinctius leads the reserve to relieve the consul whose army was surrounded: Livy, III. 5. In 267 Sp. Larcius, being appointed by the consuls, covers Rome with a third army: A. Atratinus is set at the head of affairs in the city. In 274 too we find mention of these four armies (Dionysius, IX. 5), though with the same confusion between the seniors and the city-militia. In like manner Dionysius found the very same list of forces in the fabulous stories of the first two dictators, two legions for active service, a body of reserve, and a garrison: though his account to be sure is sufficiently indistinct: V. 75, VI. 2. So *Q. Furius* in the same writer (IX. 69) ought probably to be changed, not into *Q. Fabius*, but into *Sex. Furius;* unless Dionysius made a mistake in calling him a consular. I conceive he was the commander of the four cohorts, who is not mentioned anywhere else; and at all events the *custos urbis*, Q. Fabius, could not be that.

[61] Dionysius, IX. 71.

[62] See Vol. I. p. 447.

belonging to plebeian tribes, but excluded from the classes, the latter mostly having places in the classes, but none in the tribes—were combined with such plebeian locupletes as were not required to discharge any manner of service without the walls. Nor could they be destined to any duty which required long training, more especially when the use of the javelin became more general, and the line of battle more flexible. The chief part of them must have been armed with missiles; some to serve in the phalanx, with spears.

Perhaps Livy was only adopting the phraseology of a much later time, when he called the commander of the reserve a *proconsul*[263]. But when Dionysius speaks of him as having been appointed by the consuls, he at all events has a very high degree of probability in his favour[64]. This office again never makes its appearance after the decemvirate. Now as in the year 267, in which the wardenship became an elective office, we find Spurius Larcius acting in that proconsular capacity as commander of a detachment which was to cover the country around the city, while A. Atratinus is appointed by the senate to garrison the walls and forts, we may feel quite certain that the latter was the prefect of the city, and that Dionysius was entirely mistaken in assigning that post to the former.

The lawbooks assuredly had not neglected to record the name of the first person invested with this dignity by the curies. We too are under the stronger obligation to rescue it from oblivion; since, notwithstanding the obscurity that hangs over this period, it is unquestionable that Atratinus was a remarkable man, and a meritorious citizen. It was owing to his being remembered as such, that he was said to have been the author of an equitable and conciliatory proposition in the

[263] III. 4. Dionysius, too, IX. 12, calls him ἀντιστρατηγός.

[64] VIII. 64: speaking of T. Larcius.

disputes on the Cassian agrarian law: and we know historically that a few years afterward a fair compact, which quieted some very vehement commotions, was brought about by his mediation. The accounts do not agree whether it was as dictator or interrex that he interposed so effectually. If the latter, the minor houses at this time must also have gained entrance into the first decury of the senate: and undoubtedly this result could not fail to ensue, somewhat sooner or later, from the election of one of their order to the pretorship of the city.

THE INTERNAL FEUDS OF THE PATRICIANS.

The only thing that can keep an aristocracy from splitting into hostile parties, pursuing each other with the bitterest animosity, is the existence of a formidable rustic or civic commonalty. For factions are never wanting in it; which, when it is free from disquietude, break out into irreconcilable fury against one another; as we see in the Guelfs and Ghibellines. These, as is expressly stated with regard to Florence, at the outset were merely parties among the houses: the commonalty had nothing to do with them. If the aristocratical body comprehends a narrow oligarchy with peculiar privileges, whether resulting from prescription or usurpation, these will excite no less vehement murmurs among those who are thrown into the background, than in an opprest commonalty: and the oligarchs will display the same arrogance and ferocity toward the one as toward the other. The Bacchiads lookt upon the Dorians at Corinth as their subjects. The members of the secret council at Freyburg excluded the nobless even in our fathers days from posts of honour and of authority*. The same point did the major houses at Rome endeavour to carry against the minor. The latter however found support from individuals of the privileged class, moved whether by benevolent feelings or

* Meyer of Knonau, Geschichte der Schweizerischen Eidsgenossenschaft: II. 412.

by mortified pride, and from the commonalty; whose liberties were gaining ground, so long as the houses, which after their reconciliation strove to keep it under, were at variance, and vying with each other in courting its favour.

All mention of the quarrels among the patricians has indeed been erazed from history. But not only have I shewn that the lesser houses during this period, just like the plebeians in aftertimes, acquired more extensive rights, and that after reiterated interruptions they maintained, and gradually enlarged them: but a piece of information has been preserved, though not in a historical work, which proves that these quarrels, albeit past over in silence by the later Romans, were carried on with a savage fury, such as at the utmost was not manifested more than once in the contests between the patricians and the commonalty.

The chronicles had drawn a veil over an event, which the ritual books could not pass by in silence. In order that a spot in the neighbourhood of the Circus, which was markt with a pavement of white flagstones, might not be profaned by any one through ignorance, or at least without his expiating his offense, they recorded that it had been abandoned to the Manes, as being the place where nine illustrious men, who had conspired against the consul T. Sicinius, and had been burnt alive in the Circus for hightreason, were buried. Their names were preserved. Five of them had been consuls during the years from 252 to 261: nor among the other four was there any who does not seem to have belonged to a distinguisht house. This statement was inserted by Verrius in his collection; and Festus retained it: but in the manuscript of his work it stood on one of the columns more or less of which has been burnt away; and only the lesser half remains of each of the ten lines which comprised it. Ursinus in an unlucky moment tried to fill up the deficiencies, according to a notion which was

utterly groundless: and when a supplement is printed along with a fragment, if it be not barbarous in language, it imposes upon us by an air of authenticity: this of Ursinus has never been examined. My restoration is like that of a statue by the hand of a sculptor who has seized its idea. Such a thing can no more be establisht by arguments than any intuition: its certainty results from its completeness: nor is its credibility impaired by our finding that these shreds of lines turn into a most unlookt for and important story[265].

[265] The passage I am speaking of occurs in Festus immediately after *Novalis ager:* in the edition of Gothofredus it is part of the same article; in that of Scaliger it is filled up with the injudicious supplement mentioned above, and begins with the words *Nautii consulatu:* according to the reprint of Ursinus it stands on the 23d column, or the third column of the sixth leaf in the Farnese manuscript. This is written on broad leaves, with double columns in every page; and about a third part in breadth has been burnt off: the first and fourth column on every leaf are uninjured: about half, more or less, of the other two remains, containing the former part of the lines in the second column, the latter part of those in the third. The boundary line is not exactly a straight one, but waves according as the fire happened to eat into the parchment: in the present passage the part destroyed amounted on the average to about half every line, and contained from 16 to 19 letters: in the first line however only fifteen are wanting, as it comprised the two concluding ones of the preceding article. After this description, I will transcribe the passage according to my own way of restoring it.

—— *Novem adversarii* T. Sicinii Volsci
cos. cum conjurationem inissent adversus
*eum, a pop. R. vivi in Cir*co combusti feruntur,
*et sepulti in ea regio*ne quæ est proxime Cir-
*cum, ubi locus est la*pide albo constratus.
Eorum nomina fuerunt, Opiter Verginius
Tricostus,... Valerius Laevinus, Postumus Co-
minius Auruncus,.......... llius Tolerinus, P. Ve-
*tusius Geminus,...Sempr*onius Atratinus, Ver-
*ginius Tricostus,...Mu*tius Scaevola, Sex. Fu-
sius Fusus.

The article must have begun with *No*, like the fifteen the ninth of which it stands. The conspirators were opponents of T. Sicinius,

This narrative is no slight gain: but we cannot add anything to it, except what may be deduced from the passage itself. The event must have been connected in some way with the change in the wardenship, which had been extorted from the major houses. None of the consulars here mentioned appears in the list of the ten chiefs in the year 261: but we find the two Virginii, whose absence from that list was before noticed[266]. This warrants our inferring that they were discontented on account of their exclusion.

The name of Mucius, in a story of nine men condemned to the stake, reminds us of another story, which we find floating about without the sphere of the Annals, of a Mucius who is said to have caused nine tribunes to be executed in the same way*: as does the statement in the latter, that the persons condemned had been deluded by Sp. Cassius into hindering the elections, of the great Cassius who was consul in the year after T. Sicinius. If any one therefore regards it as indisputable that nine tribunes of the people were so put to death, he must suppose that there was another Sp. Cassius, and must seek out a very different period for the event. So that in fact there would be less boldness in conjecturing that the story of the tribunes is an instance of those inversions so common in tradition, Mucius, instead of suffering death, being converted into the person who has the sentence executed. At the same time we should have to

not, as might be conjectured, his *necessarii;* else he too would have been put to death. The deficiency in the eighth line ought probably to be supplied with *Aqui*llius. The Virginius whose proper name is wanting must be Titus, the consul of the year 258; since Aulus, who was consul in 260, was one of the *Decemprimi:* see Dionysius, VI. 69. Sex. Furius is the consul of the year 266; so that his surname was *Fusus* not *Medullinus,* as Ursinus conjectured. It is only in the *Fasti Siculi*, as they are called, that T. Sicinius has the surname of Sabinus: the Capitoline Fasti for this period are wanting.

266 Opiter and Titus: see note 247.

* See the text to notes 909-915.

assume that Sicinius, whom we find after the death of Cassius at the head of an army[267], had attempted, as his enemy, in an illegal manner to procure the election of some other person instead of him, or of Proculus Virginius; that the nine men mentioned, belonging or attacht to the lesser houses, withstood him, and when Cassius had fallen, were executed as his adherents. Dionysius says that the most illustrious members of the major houses, declared against him[68]: and since the innovation, the object of which was to turn the victory over him to the advantage of a particular faction, trencht upon the rights of the lesser houses, as well as of the commonalty, it is manifest that both classes sided with him. That the lesser patrician houses did so has been forgotten: that the commonalty did has been recorded, because Cassius designed to grant it advantages, which were indispensable to its welfare, by his agrarian law.

[267] Dionysius, IX. 12.

[68] VIII. 69: Ἤχθοντο οἱ πρεσβύτατοί τε καὶ τιμιώτατοι.

OF THE PUBLIC LAND AND ITS OCCUPATION.

It is not exactly true that the agrarian law of Cassius was the earliest so called. Every law by which the commonwealth disposed of its public land, bore that name; as for instance that by which the domain of the kings was parceled out among the commonalty, and those by which colonies were planted. Even in the narrower sense, of a law whereby the state exercised its ownership in removing the old possessors from a part of its domain, and making over its right of property therein, such a law existed among those of Servius Tullius.

In the room of these significations, very general currency has been given to the term, *an agrarian law*, in the sense of an enactment relating to the landed property of all the citizens, setting a limit to it, and assigning all beyond that limit to the destitute. The regulation of Cleomenes*, the equal partition of land demanded by the frantic levelers in the French revolution, are termed agrarian laws: while in cases to which the word might suitably be applied, where a strict right of property has been unfeelingly enforced against tenants at will, cultivating a piece of ground transmitted to them from their forefathers, the word is never thought of: and the rapacious landlord, who turns a village into a solitude, regarding its fields as property he may dispose of in whatever

* Plutarch, Cleom. c. 11.

way he can make the most of it, if he has ever heard the name of the Gracchi, will condemn their agrarian law as an atrocity.

This misconception is as old as the revival of philology. Neither Sigonius nor Manutius doubted that the tribunes had limited landed property to 500 jugers, and had assigned the excess to the poorer citizens: nor had Beaufort any other notion, nor Hooke; though they all had the statement before their eyes, that the measure referred to the conquered lands, which the Greek historians insist on as so essential a point. They only mention this by way of explaining how such vast estates could have arisen. That there was a kind of landed property to which no limit had been set, they had no conception. Yet every one of them must have been aware that there was a riddle to be solved here: but they tacitly gave it up. Ferguson on the other hand never perceived that there was one: nor did Machiavel, or Montesquieu; the value of whose reflexions on Roman history is no way affected by their mistakes as to the historical facts. I should not even mention the mistakes of these two great men here, were it not instructive to observe that they are far from condemning the agrarian laws, even when taken in the common sense. I would not myself share their boldness in looking with approbation on the sacrifice of all private rights to the hope of good for the community. Yet in them this boldness was excusable: because the one lived in a republic that had been agitated for centuries by incessant convulsions, and accustomed to every kind of violation of legal rights; and the other at a time when men had grown weary of repose, and, not having known a revolution for many generations, longed for one to season the insipidity of life. The greatest mind is still akin to its age.

Machiavel believed simply that the agrarian laws establisht a limit for landed property, and assigned the rich man's surplus to the needy. He adds, that the interests

of every republic demand that the state should be rich, and the citizens poor; and that at Rome the laws requisite for this end seem either to have been wholly wanting in earlier times, or to have been framed imperfectly, or to have been insensibly relaxt. Moreover, though he conceives the agrarian laws to have led to the ruin of the republic, he yet considers the contest about them as the main cause of its having lasted so long[269]. Montesquieu assumes it as a historical fact, that Romulus distributed the territory of Rome among the first setlers in small equal parcels. Prepossest with the notion of the immense population of ancient Rome, he deems this equality the ground of her strength: and in his opinion the tribunician commotions, like the revolution effected at Sparta by the last Heraclids, were so many attempts to bring back the constitution to its original principles[70].

On the breaking out of a revolution, which nobody would have thought compatible with the tameness of modern times, the agrarian laws and the Gracchi were much talkt of. This led Heyne to do history a service, by pointing out that the laws of the tribunes related simply

[269] Discorsi, I. 37. If he had known, what Baron Rumohr has discovered from documents in the archives of the Duomo at Florence, that hamlets in the Florentine territory, which now consist of three or four farms, were villages in the thirteenth century containing twenty families of hereditary tenants,—and this too not merely in one or two cases, but almost universally, wherever there were means of making the comparison,—the author of the *Principe* would openly have urged the adopting a heroic remedy for the ills of his country. In his time the rural population was far smaller than it is now: though before the pestilence, and the ravages of war in 1527, it was greater than in the reign of Cosimo I, when it sank below half the present numbers.

Rumohr, since this was written, has publisht the fruits of his researches in a treatise on the *Ursprung der Besitzlosigkeit des Colonen im neuern Toscana*, and has no doubt given much greater precision to these remarks, which are founded on what I learnt in conversation from my honoured friend ten years ago.

[70] Considerations, 3.

and solely to the public domain[271]: and guided by this remark accounts of the Gracchic troubles were written, before the revolutionary frenzy had quite spent itself*, acquitting the Gracchi of the charge of having shaken property. It is to Heyne's essay that I myself owe my conviction of this truth, which I have firmly retained ever since I began my researches on Roman history. At the same time this merely negative certainty threw my mind into as painful a state of perplexity as was ever experienced. This torment, of being utterly unable to conceive a proposition, the reverse of which I saw it was absolutely necessary to reject[72],—a feeling nearly akin to the despair excited by vain efforts to fathom the mysteries of theology,—grew as I advanced to manhood, and engaged in public business, still, in intervals of leisure, turning my eyes toward my beloved field of antiquity; while with the ripening of experience I felt a more pressing desire to comprehend the ancient world no less distinctly than the present, more especially in those relations of civil life with which my profession rendered me conversant.

Appian's statement, that a fixt portion of the produce of the domain lands was paid for the use of them, stood in direct contradiction to Plutarch's, that they were farmed to the highest bidder[73]: and the more closely Plutarch's

[271] In a Program written in 1793: Opusc. IV. p. 350.

* By Heeren in 1795, by Hegewisch in 1801.

[72] Not only do both Plutarch and Appian expressly commence their relations of the Gracchic troubles with an account of the public domain; but the latter says that the Licinian law ordained μηδένα ἔχειν τῆσδε τῆς γῆς πλέθρα πεντακοσίων πλείονα (de Bell. Civ. I. 8): and the epitome of the 58th book of Livy asserts no less expressly: *nequis ex publico agro plus quam M* (this is the true reading) *jugera possideret.*

[73] Appian, de Bell. Civ. I. 7: that is, Posidonius: see above, note 104: Plutarch, T. Gracch. c. 8: Ἀρξαμένων τῶν πλουσίων ὑπερβάλλειν τὰς ἀποφοράς.

account was examined, the more impossibilities it shewed in all its parts. The rich, he says, engrost the farms by outbidding others. But a rich man can never afford to pay so high a rent for a small piece of ground, as the peasant who tills it with his own hands[274]. And how was it possible for the immense domains of the Roman state to be let out in small parcels? Supposing however that they had been so let, the limit prescribed to them might easily have been restored by a single upright censor who examined the register without respect of persons. Leases were made for a lustre; but in the case of the public land we hear of a possession transmitted by inheritance or purchase for centuries[75]. *Possession* and *possessors* are the terms always employed, when the use of the public lands is spoken of: but a farmer could not be said to possess a piece of ground in the Roman sense: possessing a thing, and renting it, are contradictory notions[76].

Thus a conception, which, though erroneous, was clear, intelligible, and productive of consequences, though of false ones, had given way to one from which for many

[274] It is true, a rich man may buy up his poor neighbour's land, when the latter is reduced to distress, and can find none to lend him money except at intolerably usurious interest. In this way the small properties in the territory of Tivoli are disappearing one after another.

[75] Cicero, de Off. II. 22: Quam habeat aequitatem ut agrum *multis annis* aut etiam saeculis ante *possessum*,—qui habuit amittat? 23: Ut cum ego *emerim*, aedificaverim,—tu, me invito, fruare meo? Florus, III. 13: Relictas sibi a majoribus sedes aetate, quasi hereditario jure, possidebant. In Appian, de Bell. Civ. I. 10, the possessors alledge their buildings and plantations; many, that they have bought the land, accepted it as their share of an inheritance, invested their wives portion in it, given it as a portion with their daughters. Paulus, l. 11. D. de evictionibus (XXI. 2). The extensive estate which the emperor disposed of had been bought.

[76] Marcellus, l. 19. D. de adquir. v. amitt. possess. (XLI. 2.) Javolenus, l. 21, of the same title.

years I despaired of extracting a meaning. Perhaps I never should have done so, had not the footing on which the possession of land and the landtax stand in India, supplied me with an existing image of the Roman possession, the Roman *vectigal*, and the mode of leasing it. In India the soverain is the sole proprietor of the soil: he may at pleasure confiscate the land cultivated by the Ryot. Nevertheless the latter may transmit it to his heir, and may alienate it: he renders a larger or smaller definite portion of the produce in kind: this the state leases or sells to the Zemindars; unless it has granted the revenue of a district or of a piece of ground to some temple or pious foundation for ever, or to some of its vassals and officers for life.

This state of things is not peculiar to India. Traces of it occur throughout Asia, where in ancient times it prevailed far and wide in the most unequivocal form: as it did in Egypt, where all the land was the property of the Pharaoh, and the military class merely had the landtax remitted to them. The tetrarchs in Syria were Zemindars, who usurpt the rank of soverains; as, through one of the most calamitous mistakes that ever brought ruin on a country, notwithstanding the most benevolent intentions on the part of the government, the Zemindars of Bengal succeeded under Lord Cornwallis in getting themselves recognized as dependent princes and absolute proprietors of the soil. In like manner the agrarian institutions of Rome must not be deemed peculiar to it. They were undoubtedly common to all the Italian states: and many of the notions connected with them prevailed even beyond the peninsula: so that there is the less reason for supposing that the coincidence between them and those of India is accidental, and therefore delusive.

It would not be practicable to confine an exposition of the notion and real state of the public domain to the earliest period, to its extent, and the limit prescribed to its possessors, in the days of Sp. Cassius or of Licinius

Stolo. The epoch, with reference to which we have the means of gaining a distinct conception of the subject, is a much more recent one; when the terrier of the republic had grown to an enormous bulk, and included a multitude of objects, which till then had never formed part of the property of the Roman people. Nor indeed should an inquiry like the following restrict itself to any particular period: since in such matters what at one time was an essential peculiarity may have ceast to be so at another; as was unquestionably the case with regard to the public lands of the Roman state.

The *ager publicus* was only a part of the *publicum,* or the estate of the *populus.* This consisted, like that of a private person, of divers objects, both productive and unproductive ones, and of revenues accruing from rights. The last head included tolls, excise duties, landtaxes paid by subject towns. The unproductive property comprehended public buildings of every kind, whether sacred or profane, roads, and public places. The productive objects may be divided into two classes, according to the different modes of enjoying them. Either the soverain sought to keep as much of the produce as possible for the public, though a part was at all events to be allowed to the farmer: such was the case with houses,—and the Roman republic was the proprietor of whole cities,—with mines, quarries, saltworks. Or else the state merely reserved a small share of the produce, and gave up the larger to its citizens for the benefit of individuals. There was a by-class in the Roman system, when the republic restored a conquered territory to its old inhabitants, subject to the payment of a tithe, or some other similar tax[277]. This, so long as the precarious possession lasted, was

[277] Cicero 2 in Verr. III. 6 (13): Perpaucae Siciliae civitates sunt bello—subactae, quarum ager cum esset publicus P. R. factus tamen illis est redditus. Is ager a censoribus locari solet. See below, p. 141.

like any other impost: but the republic had the right of claiming the land and turning out the possessors.

The rule, by which it was settled what part of the public property ought to be productive for the state alone, and what part, while it yielded some profit to the state, should be mainly turned to the account of private persons, is plain. The former course was taken when the nature of the object was such that only a very small number could enjoy it, thereby reaping a large profit, in which it was fair that a much greater number should participate, through the increase of the public revenue, and a proportionable diminution of the burthens of the tax-payers. It would have been granting an unfair privilege, had a single person or a few been permitted to work a mine, on condition of paying a small part of the produce: whereas the affair would have been a scramble, if every citizen who chose had been at liberty to sink a shaft. Therefore such property was least to a company. On the other hand a tunny-fishery might be carried on by thousands, if the poorer sort clubbed together to procure boats and nets: and it would have been unfair to farm it to a company, though the state might have drawn a larger revenue by doing so. Wherever there was no obstacle to an occupation for the benefit of individuals, it was preferred: indeed individuals enjoyed many kinds of public property, which yielded nothing to the state.

The state shewed itself no less moderate in its claims, where it might have demanded the whole, than the gods. They contented themselves with the refuse of the victim: and the piece of ground at Scillus, which Xenophon dedicated to Diana, was just as much her property, though he reserved the cultivation and enjoyment of it, subject to the payment of a tenth[278]. I hope my meaning will not be mistaken, if I observe that the Levites only received the tithe of the produce of the land of Canaan,

[278] Xenophon, Anab. v. 3.

though it had been consecrated to Jehovah, whom they represented, as his property[279].

So a tenth is the portion the state seems in general to have levied on corn; as the Roman republic did, whenever it exercised its right of ownership. Plantations and vineyards might fairly be subjected to a higher rate, as they require no seed, and less labour: hence the Roman people received two tenths from them[80]. So perhaps on the same ground did they of the young, the cheese, and the wool, of cattle kept on the common pastures, before an agistment was introduced. Now, if the persons who occupied the public domain had the supreme power in their hands, they might free themselves from this charge, and shift the burthens necessary for the service of the state upon the commonalty. In such a case the ownership became a bare right, as unproductive as a right of way. This however is an accidental circumstance; just as much so, as that the Delphic god let the territory of Cirrha lie waste, when his temple might have drawn a tenth from it. Properly the notion of the *ager* implied that the state itself reapt a profit[81]. This profit was termed *fructus*[82]; the occupation, for which an individual rendered this stated due, *usus*[83]. For we must not be

[279] Hence the obligation of paying a tenth did not extend beyond the borders of Palestine: and this was one ground on which the project, that such as had survived the destruction of Jerusalem should go into Egypt, was deemed sinful. Jeremiah, xlii. 15, and foll.

[80] Appian, de Bell. Civ. I. 7.

[81] So much so, that, at the institution of the *ager trientius*, a nominal rent, of an as for each juger, was laid on it, in order that it might not lose the quality of public land, but might be capable of redemption: Livy, XXXI. 13.

[82] Venditiones olim dicebantur censoriae locationes, quod velut *fructus publicorum locorum* venibant. Festus, Venditiones: where *fructus p. l.* is equivalent to *vectigal.*

[83] *Possessio est,* ut definit Gallus Aelius, *usus agri aut aedificii.* Festus, Possessio. In this sense Lucretius says: Vitaque *mancipio*

led by the fragments of the jurists, in their present state, to believe that *usus fructus* was equivalent to *fructus*[284]: such a superfluous combination of two words would be contrary to the genius of the language: it is *usus et fructus*, combined in the old style without any connecting particle. On the contrary a person who had merely the *fructus* cannot anciently have had the *usus* along with it: though in private property the one might merge in the other; and when this was the case he enjoyed the *usus fructus*.

The state seems never to have collected its tenths directly by its officers. The universal practice, to which I doubt whether a single exception occurs, was to farm all the branches of the revenue, except the landtax, fines, and some other things of a like nature. That which arose from the domain opened two sides to speculation; first in the amount of the tithe, as the harvest was more or less productive; next in the variations of price, if the rent was to be paid in money. This indeed was by no means necessary: and especially in wartimes, when corn must else have been bought for the public granaries, the simpler course was to require a fixt quantity in lieu of the tenth. A certain proportion of grain might even be contracted for instead of the two tenths of oil and wine: and this was actually done[85]. Farming for a money-rent however was incomparably the more usual practice. But the old technical term for it in the Roman system of finance exprest not the farming, but the sale of the

nulli datur, omnibus *usu*. Life belongs to the common stock of nature; she withdraws it from the possessor at her pleasure: it never becomes his property. *Mancipium* was the old word for property. *Usus* according to its most ancient meaning was the act of possessing, *possessio* the object possest: hence *usu capere*. The confined sense of the phrase in the civil law cannot have obtained till late.

[284] See Brissonius on Ususfructus; who himself gives instances proving that this does not hold.

[85] In the second Punic war by Q. Fulvius Flaccus in the case of the ager Campanus: *Locavit omnem frumento:* Livy, XXVII. 3.

fructus[286]; as in the case of those Sicilian lands, which had not become the property of the Roman republic, but paid a tithe as a landtax[87]. It was not a sale for the term of a lustre at a sum to be paid down once for all, but at one payable yearly. This was done in the strictest legal form, by mancipation,—the regular mode of conveying all rights to land, among which that of levying a tax from the produce was one[88]. The expression of Hyginus therefore, that the *jus vectigalis* was sold by mancipation, is perfectly correct. Whether this can also be said of his statement, that the contract was sometimes concluded for a lustre, and sometimes for a hundred years[89], must be left as questionable as the value of his authority. With regard to the Roman state during the commonwealth it cannot possibly have been the case; nor probably under the emperors. Estates however may have been so let by provincial towns, and, as is still more likely, by the Vestals, the augurs, and the other spiritual corporations, to which the state had granted the right to the vectigal on certain lands.

In time however the word *locatio* came to be commonly applied to the censorian contracts: and certainly they bore a close resemblance to leases in the proper sense, which were growing more and more frequent. So the same term has prevailed in modern Europe for all

286 Festus: see note 282.

87 In the Verrina frumentaria, II. 3. 6, and many other places.

88 Ulpian, tit. XIX. 1. For the republic the *ager publicus* itself was an object of mancipation; it was sold by the questors.

89 Hyginus, de condic. agr. p. 205, ed. Goesii: Qui superfuerant agri vectigalibus subjecti sunt, alii per annos quinos, alii vero mancipibus ementibus, id est conducentibus, in annos centenos,—Mancipes autem qui emerunt lege dicta jus vectigalis, ipsi per centurias locaverunt aut vendiderunt proximis quibusque possessoribus. If this writer, whose conceptions were certainly not clear, attacht any distinct meaning to the last sentence, it must be understood of a modus, or a composition for the tenth sheaf.

transactions of this kind. Now it was usual not only to speak of a letting of the tax[290], which in this case was the *locatio fructus agri*; but to say, with a slight colloquial inaccuracy, *censores agrum fruendum locasse*[91]: and a single step further led to the speaking of letting the land itself. This phrase is used not only by Livy[92], but even by Cicero, where he speaks of the districts in Sicily which were the property of the republic[93]. In this very passage however he places the meaning of the expression beyond doubt, by adding that these districts had been restored to the towns they had previously belonged to. Hence the soil cannot possibly have been least: it can only have been the *vectigal*. We must not be perplext therefore to find Polybius speaking of the letting of lands by the censors; especially as he mentions harbours among the objects farmed, where the duties, not the places themselves, were let to the farmers of the revenue[94].

Nevertheless this phrase drew Greek authors, who were strangers to the Roman system of finance, into the erroneous notion that the republic actually farmed its landed property. Hence the statement of Plutarch, which has misled all modern writers, that the rich excluded

[290] Livy, XXXII. 7: Censores portoria venalium Capuae—*fruenda locarunt.*

[91] Livy, XLII. 19: M. Lucretius legem promulgavit ut *agrum* Campanum censores *fruendum locarent*. The rapacity of individuals had withheld, not the farm-rent, but the tithe from the republic for thirty years: So Ulpian, l. 1. D. de loco publ. fruendo (XLIII. 9), explains the expression of the edict, *locum publicum fruendum locare*, of the *conductio vectigalis fruendi*.

[92] Livy, XXVII. 3: Capuae Flaccus *agro locando tempus* terit.

[93] See note 277.

[94] Polybius, VI. 17: Πολλῶν ἔργων ὄντων τῶν ἐκδιδομένων ὑπὸ τῶν τιμητῶν—πολλῶν δὲ ποταμῶν, λιμένων, κηπίων, μετάλλων, χώρας. Appian, de Bell. Civ. I. 7, says, exclusively of the lands that were not laid waste, ἐπίπρασκον ἢ ἐξεμίσθουν: adding, that a tax was levied on the produce of that which was thrown out of tillage: he seems to mean that which was restored to the old inhabitants.

persons of smaller means by outbidding them. Even Dionysius, though considerably more careful and precise than that amiable but very superficial and heedless author, in reciting the contents of the pretended ordinance of the Senate about the public land, at the time of the disturbances caused by the agrarian law of Cassius, says, it was resolved that such parts of the domain as had neither been sold nor assigned should be farmed on leases for five years[295]. If we needed evidence to shew the meaning of the Roman author whom he followed, it would appear from his attributing the same destination to the produce of these leases, which according to Livy was the purpose of the *vectigal*, when the tribunes first endeavoured, under more favorable circumstances, to revive that charge on the possessors of the *ager publicus*; namely, to pay the troops[96].

Let me now pass from the purchasers or farmers of the right of collecting the portion reserved to the state from the produce of the domain, and proceed to discuss the condition of such as held the estates which were the objects of the agrarian laws, subject to this charge.

The technical term for these estates was *possessions:* the appropriate name for those who held them, *possessors.* The legitimate expression, employed exclusively in speaking of those who held a portion of the domain, which they might transfer and alienate, though the property in it belonged to the republic, was, that they *possest* it[97].

[295] Dionysius, VIII. 73. 76. [96] Livy, IV. 36.

[97] It would be needless to collect all the passages that prove these assertions: the following might have sufficed before now to make the meaning of the terms clear. Cicero, de Offic. II. 22: qui agrariam rem tentant ut *possessores* suis sedibus pellantur. See note 275. Livy, II. 61: Ap. Claudio, causam *possessorum publici agri* sustinenti. IV. 36: vectigali *possessoribus agrorum* imposito. 51: agrariae legis, quae *possesso* per injuriam *agro publico* Patres pellebat. 53: si injusti domini *possessione agri publici* cederent. VI. 5: nobiles in *possessionem agri publici* grassari. 14: nec jam *possidendis publicis*

The word was no less accurate than common. They had only the *usus;* the republic had the *fructus* and the property; and Aelius Gallus defined *possession* to be the use of land, in contradistinction to the property[298].

Every landed estate, Javolenus says, is a *praedium;* but only one that is the property of the possessor is called in relation to him *ager:* that which he occupies, but which neither is nor can be his property, is termed *possessio*[99]. Festus gives another definition of the Roman possessions, containing several terms which designate estates held in the public lands. They are described as extensive tracts, held not by mancipation, but by use, and which had been occupied by the mere will of the holder[300]. The vast extent of these lands is purely accidental; and the addition of *privatique* spoils the explanation. This fault is probably owing to Festus: Verrius

agris contentos esse. 35: ne quis plus D jugera *agri possideret.* Epitome, LVIII. ne quis ex *publico agro* plus quam M jugera *possideret.* Florus, III. 13: reduci plebs in *agros non* (not *unde*) poterat sine *possidentium* eversione. Paulus, l. 11. D. de evictionib. (XXI. 2): Has *possessiones* ex praecepto principali partim distractas, partim veteranis adsignatas: see below, note 311. Possessions are distinguisht from property in the most pointed way by Cicero, adv. Rullum, III. 3 (12), in the following passage among others: sunt multi agri lege Cornelia *publicati,* nec cuiquam assignati neque venditi, qui a paucis —*possidentur.*—hos *privatos* facit; hos — Rullus non vobis assignare vult, sed eis condonare qui *possident.* Again: cum ea quae *vestra* sunt condonari *possessoribus* videatis. To these passages Savigny (Vom Besitz, p. 151, 4th edition) has added a very important one from Orosius, v. 18: eodem tempore loca *publica* quae in circuitu Capitolii pontificibus, auguribus, decemviris, et flaminibus *in possessionem* tradita erant, cogente inopia *vendita sunt.* Orosius had Livy constantly before him: though perhaps not immediately, but in a circumstantial abridgement.

[298] See note 283.

[99] l. 115. D. de V. S. In the bill of Rullus too *agri* and *possessiones* were opposed to each other: Cicero, adv. Rull. III. 2 (7).

[300] Possessiones appellantur agri late patentes publici privatique, quia (read *qui*) non mancipatione sed usu tenebantur, et ut quisque occupaverat collibebat (read *colebantur*). Festus, Possessiones.

may have said that even private lands, of which a man had only the use, were called possessions; and this is correct. But the other terms in the definition are peculiar to the domain.

The origin of these possessions, as we are assured by various testimonies, was the occupying or entering upon territory laid waste in war[301]: as that of property, which was opposed to them in every particular, was a distinct assignment and transfer on the part of the state[2]. Still it cannot be imagined that this occupying was left to the uncontrolled choice of individuals, which would have bred violence and confusion. By what regulation these mischiefs were prevented, Appian omits to tell us, where he says that the citizens were invited by the state,—that is, by the edict of a magistrate,—to take possession of the waste tracts for their own use[3]. When once occupied, they might be transferred, just like property, to an heir or a purchaser[4]: but property could never arise in them by *usucapio*. This, as against the state, was absolutely impossible, according to a fundamental maxim

[301] This is frequently intimated in the writings of the Agrimensores: so at the very beginning by Siculus Flaccus, p. 3; nec tantum *occupaverunt* quod colere potuissent, sed quantum in spe colendi reservavere. Livy too, VI. 37, says: nec agros *occupandi* modum —Patribus fore; and so Festus on Possessiones: see note 300. *Sibi sumere*, in the inscription of the Lex Thoria. The correlative term for the act of the state was *concessio*. In the bill of Rullus the expressions *publice data, assignata* were used for property assigned, *concessa* for the possessions: Cicero, adv. Rull. III. 2 (7). What Dionysius says (VIII. 73) about drawing boundaries in the domain (that is, according to his view on the lands to be farmed), is a signal instance how boldly he ventures to apply his very obscure conceptions with regard to peculiar Roman institutions, and so introduces them in the wrong place.

[2] Such lands are the *agri assignati*, the former the *occupatorii;* the former *limitati*, the latter *arcifinales;* the *latifundia arcentium vicinos:* Pliny, XXVIII. 4.

[3] Ἐπεκήρυττον. Appian, I. 7.

[4] See note 275.

of the old Roman jurisprudence[305]: as is intimated in the definition of Javolenus by the clause: *which cannot be our property*. Sundry instances recorded or alluded to by historians, by the Agrimensores, and in inscriptions, of domain lands resumed by the state after a long usurpation, shew how rigidly this maxim was enforced from the earliest period down to the censorship of Vespasian. Without this security, the republic would have been exposed to endless losses through the negligence of her officers, and would have been obliged to abstain altogether from granting the use of the domain. She retained the property, until it was transferred by a formal act: and she had an unlimited power of terminating the possession, which was always precarious, and of selling or assigning the vacated land. A subject who cultivated the ground she had allowed his forefathers to retain, could not murmur if she thought fit to dispose of it otherwise[6]. Nor was the possession of a citizen more inviolable, even within the 500 jugers which the Licinian law fixt as its limit, but which it did not guarantee: though Tiberius Gracchus respected and confirmed possession up to twice that amount. This is proved beyond doubt by the following examples. The *ager trientius tabuliusque*, which was given by way of satisfaction for the third instalment of the loan in the second Punic war, lay around Rome: the creditors of the state were allowed to look out pieces of land within fifty miles of the city, which from their situation must all have been in the possession of Roman citizens[7]. So the territory of Capua was divided among a great number of small holders, Roman citizens: yet the right of the state to take it from them for the sake of founding a colony

305 Frontinus (Aggenus, as he is called), II. de controv. agrorum tit. de alluvione, p. 69, ed. Goesii.

6 Cicero, adv. Rullum, II. 21 (57).

7 Livy, XXXI. 13.

was not disputed, but only the equity and policy of such a measure[308].

When Appius the Blind sold domain-lands far and wide to defray the enormous expenses of his gigantic works, many of the families turned out to make room for the purchasers may probably have curst the undertakings which ruined their comfort: but they could not deny the republic's right. Some of the cases may have been extremely hard. Had the measure only affected estates derived by inheritance from the first occupiers, the loss of a possession acquired without expense would not have been an intolerable grievance. But even when it had been purchast, or taken in any other way as money's worth, the possessor still lost it, just as much as if it had been destroyed by some disaster. He could not claim any compensation for his eviction: nay, Paulus, in giving an opinion on a particular case, holds the ejected possessor bound to pay the remaining instalment of the purchase money[9]. There is no ground for supposing that the judges five hundred years earlier would have been more in favour of an equitable adjustment, than these late jurists, who knew of the public domain only in rare instances. The same Paulus speaks of it under the name of *agri publici*, laying it down that the possession of them, since they were least in perpetuity, could not be resumed except by the emperor immediately[10]: he however, as the case cited proves, might do so, without allowing any compensation[11].

[308] Cicero, adv. Rullum, II. 31 (84). It was only a temporary concession: *οὐκ ἄγοντές πω σχολὴν διαλαχεῖν, ἐπεκήρυττον ἐν τοσῷδε τοῖς ἐθέλουσιν ἐκπονεῖν*: Appian, de Bell. Civ. I. 7.

[9] l. 11. D. de evict. (XXI. 2).

[10] Paulus, l. 11. D. de public. et vectig. (XXXIX. 4).

[11] The case on which Paulus gave the opinion cited in note 309, related to an estate in Germany, on the right bank of the Rhine, at the extremity of the Roman military frontier. This form of the ancient mode of possessing land seems at this time to have been

It is clear that, so long as the republic, by frequently enforcing her right, directed every one's attention to the uncertainty of all possessions, and kept the marketprice of such estates low, the loss was bearable. There may even have occurred cases, when the censors put lands up to sale in great masses, and were therefore forced to let them go cheap, where the possessor was glad to acquire

confined to that province : and there it continued down to the reigns of Honorius and Theodosius the younger. Even this relic of the old law was abolisht by a constitution of the year 423, in which the emperor converted the right of the possessors into absolute ownership (l. un. C. Th. de rei vindicat.—II. 23). It was given at Ravenna. The matter seems to have been altogether forein to the Eastern Empire : and so it is not to be wondered at that not only is this constitution omitted in the code, but scarcely a trace of the old law appears in the Pandects themselves. The imperial domains, which are also contradistinguisht from private property, have nothing to do with this subject.

But the Pandects speak frequently, and under a separate title, of town-lands, subject to a *vectigal.* These have been compared, by writers who came nearest to the correct notion, to possessions in the public land of the state. Yet the legal distinction between the two is no less wide than the difference in the extent and importance of the objects. Three main points are decisive on this head. 1. It has been observed (see the text to note 305) that no possessor could ever acquire the property of land belonging to the Roman people by *usucapio :* town-lands subject to a *vectigal* could be so acquired : Savigny Vom Besitz, p. 110, ed. 2.—2. According to Paulus (l. 1. D. § 1. si ager vectigalis. VI. 3) a possessor charged with the *vectigal* had an action against a town, if, while he paid his rentcharge regularly (l. 2. eod.), his land was taken from him,—just like a tenant for a term (l. 3. eod.),—on the strength of which positive authority we must, with Haloander, transpose *tamdiu* and *quamdiu* (l. 1. pr.), which in the Florentine manuscript are absurdly inverted. (According to this, the later possession charged with *vectigal* differed from that under an emphyteutic contract only in respect to the lessors, who in the former case were necessarily a corporation, in the latter might be private persons.) The Roman republic had an unlimited right of turning out a possessor without any indemnity.—3. A town farmed its lands in perpetuity to any one, by contract ; the republic only to members of the soverain state, or to the old inhabitants, by concession.

the security of absolute property, and to get rid of the tithe, by purchasing at a low price. Under the contrary circumstances, when the possession had not been shaken by the agrarian laws for a number of years, the market-price, allowing for the value of the tithe, might come very near to that of property.

No less precarious than this tenure under the state was that of the clients under their patrons, who granted them small plots of lands out of their portion of the domain, as the price of their dependence. Their patrons made these grants to them, it is said, as to their own sons[312]: and the duration of every possession that a son received from his father rested entirely on the father's pleasure. Let it not be called a modern idea to suppose that they were attacht to the estate for the term of their services, on a footing of mutual independence, by a cottage and a couple of acres. The law enjoined the settling of free husbandmen in proportion to the extent of every estate in the public lands[13]. Such a client, a poor tenant, of Cato the elder, was Salonius, whose daughter he married. This in aftertimes needed to be prescribed by law, and still was not observed: but anciently, when the power of the patricians rested on the numbers of their clients, it had been the object of their ambition. It was fair however that a possessor should be able to get rid of a useless and faithless retainer: therefore no power stept in to protect the client, if the lord resumed his grant and discarded him.

The transfer of possession in the public lands was divested of all the solemnities contrived to secure property, and was entitled to none of the actions and remedies by which the latter was maintained. It would have

[312] Patres—agrorum partes attribuebant tenuioribus, perinde ac liberis propriis. Festus, Patres. They could not part with such spots from their own hereditary lands.

[13] Appian, D. B. C. I. 8.

had no shield against violence and fraud, had not the supreme power which conferred it, and invited men to occupy it, kept one in readiness. It was secured by the possessory interdicts: for there is nothing I hold to be more certain than their original direct reference to this possession. Cicero expressly applies them to it[314]. Nor does Dionysius omit to notice them in his account of the discussions on the public lands, and of the Icilian law[15]: only, as in numberless other instances, he mistakes their gist. The tenour of the pretorian injunctions points directly to the possession of the public lands; not indeed the form of the interdict *uti possidetis*, as we now read it extracted from the perpetual edict; for this talks of houses: but one far more ancient, preserved as it was originally reported by Aelius Gallus[16], which speaks expressly of a *fundus*.

Though the pretor however did not permit a tenant at will (*precario*) to claim land as a permanent possession

[314] Cicero, adv. Rullum, III. 3 (11). Haec trib. pl. promulgare ausus est ut quod quisque—possidet, id eo jure teneret, quo qui optimo privatum? Etiamne si vi ejecit? Etiamne si clam, si precario venit in possessionem? Ergo hac lege jus civile, causae possessionum, praetorum interdicta tolluntur.

[15] Εἴ τινα ἐξ αὐτῆς κλέπτοντες (clam) ἢ βιαζόμενοί (vi) τινες ἰδιῶται κατανέμουσιν: Dionysius, VIII. 73. βεβιασμένοι, ἢ κλοπῇ λαβόντες: x. 32. In both cases he supposes that such a vicious possession was forfeited to the republic: and though in this he may not have seized the exact purport of the Roman statement he was following, still it is natural that, if only a part of the possessions was resumed, those which had been wrongfully acquired went first. Be this as it may, the Icilian law was preserved; and in it mention was unquestionably made of possession *vi et clam*.

[16] Festus Possessio. *Uti nunc possidetis eum fundum*: instead of *eas aedes*, as it runs in the Pandects (l. I. D. XLIII. 17). It is impossible to distinguish all the views which have been suggested by a friend during a lively interchange of thoughts; though in their origin they are not properly ours, but belong to him more than to ourselves. What he has imparted however one may mention as his free gift: the observation in the text I owe to Savigny.

against the donor, but only took it under his protection as it subsisted (*uti possidetis*); he nevertheless guaranteed the independent petty occupiers, by declaring a forcible possession (*vi*) void*. One of the grievances bitterly complained of by the Gracchi, and by all the patriots of their age, was that, while a soldier was serving against the enemy, his powerful neighbour, who coveted his small estate, would eject his wife and children. With property this was manifestly impossible: in the public lands, remote as many districts were from the Roman seats of justice, such acts might frequently be hazarded. An absent possessor, whether poor or rich, might without his knowledge (*clam*) be ousted by his neighbours from his land, which was not protected by limitation. Here likewise the pretor granted relief: and in no case could the possession thus surreptitiously obtained be lost by prescription, which affected property only. The clause, *one from the other* (*alter ab altero*) precluded the applying the edict to the relation between a possessor and the state.

Of course the interdicts also protected the possession of things that were articles of private property, whether the owner had meant merely to grant the use of them, or that the use was to render them quiritary property, in the place of a transfer in open court. The first case however could not often occur: nor could there be any intention to encourage the neglect of the customary formalities, which in early times, — and in these the interdicts were already common, — cost very little trouble: so that this application of the interdicts, compared with that to the public lands, must then have been very inconsiderable. This proportion indeed was necessarily inverted, when the Roman law was extended to lands in the provinces, and when even in Italy the spirit of the age rendered the neglect of the troublesome forms used

* See the titles 16 and 17 in D. XLIII.

in the transfer of property more and more general, while the domain there gradually disappeared. Its vast extent had been exceedingly reduced by the agrarian laws of Tiberius Gracchus before the Marsic war, and during that war by sale: and though the conquests made in this, and the confiscations in the civil wars, again added large districts to it, these were forthwith given away to military colonies. The war by which Vespasian conquered the empire, and the rewards he bestowed on his legions, caused the last great changes of this kind, considerable assignments of land in Samnium to the veterans[317]. But then his rigid parsimony led him to resume all remnants of the distributed territories, which, not having been expressly granted away by the state, were enjoyed by the colonies and municipal towns as corporation lands: these were the *subseciva.* This measure shook the fortunes of almost all the provincial towns; so that Domitian became the benefactor of Italy by an edict granting all this land to the communities that had previously enjoyed the use of it[18]. But at the same time the landed property of the state disappeared almost entirely: and a writer, who probably lived in the second century, speaks as if he knew of no land, but some in Picenum as it was then called, near Reate, that was the property of the Roman people, and paid a landtax to the treasury[19].

With such trifling exceptions, the property (*publicum*) of the state in the peninsula was now almost confined to streams, banks, and roads: so that the provisions of the perpetual edict itself on this head, like the elucidations of them which we read in fragments, may perhaps scarcely have treated of any other objects. Nevertheless, since, according to the order of the subjects, as well in Ulpian's

[317] Aggenus de controv. p. 54.

[18] Frontinus (Aggenus, II.), tit. de subsecivis, pp. 68, 69.

[19] Siculus Flaccus, p. 2. Likewise some forests: Frontinus, p. 42.

commentary as in the Pandects, the interdicts appear to have stood next to the provisions in the edict concerning the domain[320], this may serve to confirm the opinion that they related originally to the public lands.

This confirmation was communicated to me by Savigny, when I shewed him my researches on the domain, and my view of the object of the interdicts, not without uneasiness lest I might stumble in treading on such forein ground. His approbation gave firmness to my footing; and it is owing principally to the assent he openly declared when my researches were publisht, that their results are now almost universally adopted. But for this an ungraduated stranger would have had to pay for his presumption in discovering the truth. And so I ventured some years back in my lectures to propose some further inferences from the proposition, that the pretor undertook the protection of possession in the public lands.

A little attention to the spirit of the Roman institutions will convince any one that an inheritance could embrace nothing but property; that for instance a testament executed by mancipation could never comprehend and transfer possession. This, without the aid of the state, would have been vacated at every demise of a tenant, and thrown open to the first person who chose to occupy it. But the soverain power which had originally conferred it, and had shielded it from encroachment, conferred it on the heir; who might then invoke the same protection as his predecessor had enjoyed. The pretor gave the possession of the estate to the person who, according to common law, or to the last will of the deceast, would have claimed it, if it had been property, as heir. But since the state might deal as it thought fit with its own property, the magistrate was not only

[320] The provisions on the *publicum* stand in Dig. XLIII. tit. 6—15; then follow the interdicts: in Ulpian the former were contained in the sixtyninth book, the latter in the seventieth of his commentary

not tied down by the strict rules of legal succession, but might even set aside testamentary dispositions, which on these subjects had only the force of wishes. They were open to such modifications as equity and common sense might suggest to the pretor for the time being: and one pretor might lay down very different ordinances on this head from his predecessor.

That any magistrate should have been entitled to introduce rules of succession tending to undermine those establisht by law[321], is a thing so monstrous that no man of sense can deem it possible, if he will only attempt to conceive it in practice. But when the possession of the property of the state, which lay entirely out of the ordinary jurisdiction, had become systematic, and when this possession grew to form so large a part of all private fortunes, as was the case between the end of the second Punic war and the Sempronian law; when property in the subject countries and the provinces, which likewise did not fall under the rules of inheritance laid down in the Twelve Tables, had been placed on the same footing with that possession;—a mode of inheritance grew up by custom, which it cannot surprise us to see gradually spreading, and supplanting the legal one. Probably very few cases occurred, of estates above indigence, where the common law sufficed to regulate the succession, and where the intervention of the pretor was not called for.

Everybody knows indeed that the *bonorum possessio* in the imperial laws had a different shape and character: but changes of this kind were as familiar to the civil law of the Romans, as to their constitutional law, or to the laws of modern nations. Like these the Roman civil law was affected by the gradual changes in society: nay,

[321] This most absurd opinion is delivered by Heineccius, to mention only one highly respectable scholar, as if the matter were quite clear, and contained nothing at all startling.

it was equally exposed to the influence of misconceptions which promoted gross injustice. In Ireland, after Tyrone's rebellion, ignorance of the native law occasioned the confiscation of all lands belonging to the subjects of the insurgent chiefs: the government eagerly dealt with them according to the principles of the feudal system, which was entirely forein to the nation[322]. Under equal ignorance German tribunals have pronounced against the rights of hereditary tenants, who owed their landlord nothing but fines, easy services, and a quit-rent, and have recognized the power of rapacious landlords to reduce their interest to that of tenants for a term, and to turn them out at pleasure. A wrong precisely similar was inflicted on the provincial landowners by the Roman jurisprudence. So early as the age of the Antonines, it unquestionably ascribed the property of the soil in the provinces either to the Roman people or to the emperor, as the former or the latter was regarded as the soverain[23]. The free allied cities, such as Rhodes, would have been admitted by Gaius himself to be exceptions. But, beside these, Cicero names several towns in Sicily which were exempt from the landtax and other burthens though they were not allies: indeed, by speaking of the very few that had forfeited their territory to Rome by resistance, he admits that in the others, which were subject to the tithe, the soil was private property[24], though under forein and natural law[25]. He mentions a question raised, whether a district in Sicily belonged to the inhabitants or to the Roman people[26]. It is no wonder that on the one hand the acquisition of the East and of

[322] This abominable iniquity is very frankly exposed by Sir John Davies in his extremely instructive Historical Tracts.

[23] Gaius, Inst. II. 7. [24] See note 277.

[25] And though *taillable et corvéable à volonté.*

[26] Rullus had excepted a certain *ager Recentoricus* in Sicily from sale: *si privatus est,* says Cicero, it is needless to except it: adv. Rull. I. 4 (11).

Egypt, where the soil had always been the property of the government, on the other hand the conquest of Gaul and the border provinces, which far exceeded the old provincial territories in extent, obscured the legal rights of the latter in the eyes of the Roman government and tribunals; just as the condition of the peasantry in the conquered Wendish countries has bred confusion as to that in the adjacent parts of Germany. More surprising is it that the truth, though recorded in books, was forgotten in the course of sixty years: for even Frontinus had spoken of the *arva publica* in the provinces, in contradistinction to the *agri privati* there. The only difference between these and landed property, according to Italian law, was that they paid landtax, exemption from which was an essential quality of the latter[327].

[327] Aggenus, on Frontinus, p. 47: Ideo publica (arva) hoc loco eum dixisse existimo, quod omnes etiam privati agri (in provinciis) tributa atque vectigalia persolvunt.

THE ASSIGNMENTS OF LAND BEFORE THE TIME OF SP. CASSIUS.

WHETHER Rome was considered as a colony from Alba, or as planted by the son of Mars, who stood in the place of a parent city, its foundation was supposed, and related as from tradition, to have been accompanied by all the solemnities usual in new colonies. As Romulus was made to trace the pomerium with a plough, so to him was ascribed the assignment of two jugers a-piece to each of the citizens, as heritable property[328]; and it cannot be doubted that in very early times the Roman territory was actually divided into such small allotments. A hundred such formed an ancient century, of two hundred jugers of arable[29], inclosed by strips drawn according to the rules of augury as immovable limits. This was the district of a cury. That each possest an equal one, is among the traditions of the old law[30]: and that a hundred householders were assigned to each cury is clear, because three thousand warriors were reckoned for

[328] See above, note 92.

[29] Siculus Flaccus, ed. Goes. p. 15, and Varro, de r. r. I. 10; who here gives the correct statement: elsewhere, de L. L. V. 4. (IV. p. 10. Bip.) in the same way as the original centuries of the legion were imagined to have consisted of 100 men, he assumes a century of 100 jugers, which is nowhere mentioned, and probably never existed, as the original one.

[30] *Διελὼν τὴν γῆν εἰς τριάκοντα* (see note 341) *κλήρους ἴσους, ἑκάστῃ φράτρᾳ κλῆρον ἀπέδωκεν ἕνα*: Dionysius, II. 7.

the three tribes[331]; as the colonists of Antium are designated as a thousand soldiers. Hence the statement that at the first there were a thousand householders in Rome, was unquestionably understood of the Ramnes[32]; though it may originally have related to a state of things the remembrance of which was studiously obliterated. A cury is also shewn to have contained a hundred citizens by the ten decuries it consisted of[33]. Each century of arable land was regarded as one mass, which was pledged to the sharers in it[34]: and so was each cury to its members. It would be an inconceivable inconsistency, that, while the property of a citizen who died without heirs past to his house, the estate of the last member of an extinct house should not have gone to his cury[35]. At the time indeed when the Potitii became extinct, the case must have been materially different. It is highly probable, though it does not admit of proof, that no *heredium* could pass to any but a member of the same cury.

But Romulus did not assign the whole district to his

331 Singulae tribus singula millia militum mittebant: Varro, de l. l. v. 16 (iv. p. 26).

32 See note 91.

33 Dionysius, ii. 7.

34 On this rests the agrarian *controversia de modo*. If a river carried away a piece of ground, or if a landslip happened, the loss fell on all the landowners in the century in proportion to its extent. Aggenus, p. 57.

35 Did the estate of a man who died without heirs go to his house as a common possession, or was it divided among the individual members? I conjecture the latter: at least I have no hesitation in thinking that the general distributions in the curies are proved by these verses of Plautus: Aulul. i. 2. 29. *Nam noster nostrae qui est magister curiae Dividere argenti numos dixit in viros.* It is highly improbable that this should have been translated from the Greek, if the practice was unknown at Rome: a cury indeed about the year 550 was quite a different thing from what it had been three hundred years before; and Euclio, whom, like all similar characters in their Roman dress, the poet takes only for an erarian, could not anciently have belonged to one; but the distributions cannot have begun in the new-modeled curies.

ten curies. He set apart a portion for the service of the gods, and for the royal demesnes: another portion he left as common land[336], that is, for pasture. It has already been observed that two jugers could not possibly maintain a family: their produce was eked out by the stock kept on the common land; and the main part of every man's substance consisted in cattle[37]. An agistment was paid to the commonwealth for the pasturage: and the statement that the populus originally received landtax only from the pastures, and that hence in the censorian registers all public lands subject to landtax were called *pascua*, appears to refer to these earliest times[38].

In our accounts of the law on this head no notice is taken of the footing on which the other two communities held their landed property, before they became tribes of the Roman people. But this much is demonstrated, that all quiritary property issued from the republic, and that communities which received the Roman franchise, surrendered their lands to the Roman state, and received them back from it. Hence the assignment of landed property is ascribed to the kings, by whom those tribes are brought forward in history, as the first act of their reigns[39]: and thus the accounts which represent the growth of the constitution under these personifications, arrive at the completion of the genuine *ager Romanus*.

336 Dionysius, II. 7. Ἐξελὼν τὴν ἀρκοῦσαν εἰς ἱερὰ καὶ τεμένη, καί τινα καὶ τῷ κοινῷ γῆν καταλιπών. Out of the rich κλῆρος of the kings (Cicero, de re p. v. 2) they defrayed the charges of the public worship: Dionysius, III. 1.

37 Columella, VI. pr.

38 Pliny, XVIII. 3.

39 To Numa,—viritim,—Cicero, de re p. II. 14. Dionysius, II. 62: Numa assigns ἀφ' ἧς Ῥώμυλος ἐκέκτητο χώρας, καὶ ἀπὸ τῆς δημοσίας χώρας μοῖράν τινα ὀλίγην, to those who had received nothing under Romulus. Tullus also (Dionysius, III. 1) distributes land among those who had no allotment: with which assignment is connected the founding of the town on the Caelian to afford them quarters.

This, so far as it was the property of the houses, consisted of three regions named after the old tribes[340], that is, on the whole, of thirty centuries, or 6000 jugers of arable land, markt out by limits, which was private property. But beside this, each of the three towns had its royal domain and its temple-land, and a common; and only in the course of time can all these portions have been united. This simple conception, which is sound in its way, was totally perplext, when, by a mistake which cannot have arisen till late, the final state of the populus was absurdly confounded with that in the time of Romulus. Romulus was said to have establisht thirty curies[41], and to have had three thousand citizens at the foundation of the city[42]. Now as a great deal of useless trouble has been taken to adapt the hundred senators to the thirty curies, just so has it happened with the assignments of land by the second and third king. The former indeed is provided with lands from the conquests of Romulus: but Numa had left none such to his successor: therefore it was feigned that Tullus parceled out the royal domain. In both cases, the measure is represented as an act of charity to the poor.

Since there can be no doubt then as to the existence of the thirty regions belonging to the curies, Livy is in errour when he supposes that the houses anciently had no landed property, because almost all the land had been acquired by conquest, and all that had been sold or assigned was in the hands of the plebs[43]. Not only was the arable field in the old *ager Romanus* secured, like all property, against every agrarian law: it was the same

[340] Varro, de l. l. v. 9 (IV. p. 17). [41] See note 330.

[42] Dionysius, II. 2: he adds 300 knights, who, it is probable, were conceived to have been included in that number: see note 331.

[43] Livy, IV. 48. Nec enim ferme quidquam agri, ut in urbe alieno solo posita, non armis partum erat, nec quod venisset, assignatumve publice esset, praeterquam plebs habebat.

with the ancient common, and all the additions made to it, before the existence of the plebs. The founder of the plebs, king Ancus, is said to have made the fourth assignment of land[344]: and this again is nothing more than a historical form of expressing, what was a matter of course, that the Latin communities, out of which the new order was formed, surrendered their lands to the Roman state, and received them back according to the laws of the formal limitation. In such transactions transfers and exchanges were unavoidable; especially if there be ground for supposing that several of the newly adopted citizens changed their abode.

The public lands of the Roman state must have attained a very great extent even before the reign of Servius. When towns were taken by storm, or the citizens redeemed themselves from death or slavery by an unconditional surrender of their persons and property[45], their whole territory became the property of the conqueror[46]. Frequently a town ceded a part, generally a third, of its district or of its public lands, as the price of peace.

The course pursued under the kings was undoubtedly similar to that in later times. Lands, the cultivation of

[344] Vol. I. p. 354.

[45] In the form of surrender in Livy, I. 38, the envoys give up themselves, their people, urbem, agros, aquam, terminos, delubra, utensilia (their movable property), divina humanaque omnia.

[46] Publicatur is ager qui ex hostibus captus sit: Pomponius, l. 20. D. de captivis et postliminio (XLIX. 15). If the conquered land had previously been Roman, it returned to the original owner: not so if it had belonged to foreiners: of which the conquests of Gallic territories taken from the Cimbrians afford an example. The Saracens gave the same extent, and the same limits, to the right of conquest as Rome. The property in land was retained in towns that had submitted, but not in those taken by storm. In the history of the conquest of Mesopotamia, which goes by the name of Elwakedi, it is related that the general declared, that conversion to Islam did not entitle the inhabitants of Circesium to retain the ownership of their land: they were to pay a groundrent for it.

which had not been entirely ruined, and which were not granted to farmers, or to the old inhabitants on a precarious tenure, would be sold[347]; particularly perhaps olive-grounds and vineyards in good condition. For it was impossible that the persons, who, as members of the sovereign body, had equal claims to the possession of such estates, could come to a quiet adjustment. They must have been coveted by all: and the plantations which had not been laid waste cannot have been very extensive. In Latium, as in Attica and Lombardy, in a hostile inroad, every fruit-tree and vine must have been cut down, unless some accident prevented such devastation. The waste land however might have been assigned to the citizens for their property. The reason why this was not done was most probably because it must then have been allotted in equal parcels to the curies; and these in the course of some generations contained very unequal numbers: so that this absurd result would have ensued, that the members of those which were least numerous, and rendered least service to the state, would have enjoyed the largest shares. This must have been the cause which led to a practice so surprising as that of enjoying the public lands by possession, which doubtless was always charged with the payment of a tithe: for without this, and the sums raised by the sale of lands, the kings would never have been able to execute their great works. This mode of enjoyment suited the powerful citizens, who had many retainers to settle: while others, who were not anxious for a small distant property, and would only have parted with it if they had received it, made no application for a share, and were satisfied with a largess from the produce of the tithe out of the public coffer of the cury[48].

[347] On this subject Appian, de Bell. Civ. I. 7, is extremely distinct and trustworthy.

[48] See note 335.

When the plebs had been formed, and served in the army of the republic, it was entitled to a fair portion of the land won by arms, though the name of *ager publicus* was still retained from the time when the *populus* was the whole of the state. But when the infantry by the Servian legislation was to be drawn exclusively from the plebeians, it became an intolerable wrong to give them no share in the land which they had conquered with their blood. Hence the author of that constitution is represented as expressing indignation at this scandalous conduct of the patricians[349], and as making a general assignment of land to the members of the commonalty[50]. It cannot be supposed however that Servius rested satisfied with a transient measure. The code of beneficent laws that bore his name must have contained a regulation providing what was just and fair for the future: to it we may refer the origin of the plebeian hides of seven jugers[51]. The two orders differed from each other in this as in all other respects. The plebeians received a definite and equal portion, in perpetual ownership, inheritable and alienable according to the rigid rules of law; exempt from tax on the produce, but entered in the censors' books, and thereby subjected to all assessments, which never affected possessions in the public lands. The allotments too were assigned to individuals: for the plebeians were not attacht to their tribes through the intervention of any subordinate body, but were admitted individually into them. The patrician centuries of arable land consisted of a hundred lots, the plebeian of a hundred *actus*[52]: this was the quantity of the lands that were put up to sale by the questors[53],

349 Dionysius, IV. 9: Τῆς δημοσίας γῆς — τοὺς ἀναιδεστάτους κρατεῖν.

50 Dionysius, IV. 10. 13.

51 Forensia septem jugera: Varro, de r. r. I. 2.

52 Fifty jugers: the original measure was an actus, a square of 14400 square feet: two of these made a juger.

53 Agri quaestorii: Siculus Flaccus, p. 14.

and, according to Livy's view at least, for the exclusive benefit of the plebeians: such a century, or, other accounts say, ten such were designed for Curius, and disdained by him[354]. Each contained seven lots of seven jugers; for half the breadth of the border strip was included in the fifty: and when, after the Latin war, an assignment of $2\frac{3}{4}$ jugers was made in one district, and of $3\frac{1}{4}$ in another, a like surface of fifty *actus* was divided among eighteen and fifteen persons respectively[55]. The compass of the land to be divided necessarily determined the size of the allotments, and probably was seldom so great as to allow of seven jugers for each man: though the number of claimants is not indicated by that of the heads in the census: for, to form a conjecture about that number, we must not only deduct the lists of the isopolitan towns, but also the patricians and the erarians among the Romans themselves; both which classes enjoyed the public land, the one by immediate possession, the other, at least a part of it, by grants received in the capacity of clients. The erarians had no claim to conquered lands, as they did not serve in the field: for military service was ever the foundation of the title to an assignment[56]; until at length the right was confined to the veterans. It need scarcely be observed that after the completion of every conquest the portion of the arable land which was to remain public property, and that which was to

[354] Columella, I. praef. 14; and the treatise De Viris illustr. 33. Valerius Maximus, III. 4. 5. Frontinus, Strateg. IV. 3. 12.

[55] The centuries of 210 jugers were also divisible into lots of seven each, and contained thirty such. The greater centuries of 240 and 400 jugers are a late usage, and refer to very large estates.

[56] So Frontinus, Strateg. IV. 3. 12, says, with reference to the time of Curius, that the allotted quantity of land was given to the *milites consummati*. After the second Punic war, Scipio's soldiers are rewarded with land (Livy, XXXI. 4. 49); and we already perceive a constant proportion between the shares of the soldier, the centurion, and the knight, of which there is no trace in older times.

be parceled out, was determined. The plebeians were as much disqualified from sharing the use of the former by occupation, as the patricians from receiving assignments. But the enjoyment of the common pastures was indispensable to both: and there is no trace or likelihood that distinct tracts of pasture-land were set apart for the plebs.

The sacrifice of a law like this was of course one of the first articles in the bargain made by Tarquinius with the faction that supported him. On the other hand, when the patricians aimed at effecting an incurable breach between the commonalty and the banisht prince, they decreed a general assignment of seven jugers to each man from the royal domains. Among the tyrannical acts they committed afterward, it is mentioned, that, as soon as their monopoly of power was firmly establisht against the plebeian nobless, and the Tarquins were irrevocably expelled, they turned the plebeians out of the public lands[357]: not that the latter could become occupants there; but the want of the *commercium* did not preclude their buying pieces of land, in which the sale did not confer an absolute ownership. It is probably to this period that we ought to refer an allusion which we find to persons ejected from the public lands on account of their plebeian quality[58]: though the patricians appear for a long time after in exclusive possession of them[59]. To expell

[357] Agro pellere: Sallust, Fragm. Hist. p. 935, ed. Cort. See Vol. I. p. 572.

[58] Quicunque propter plebitatem agro publico ejecti sunt: Cassius Hemina, quoted by Nonius, on Plebitas.

[59] Hence Livy forgets his prejudices when he is contemplating this usurpation, and censures the patricians, not only in expressing the feelings of the tribunes (IV. 53. VI. 5. 37), or of M. Manlius (VI. 14), but in his own person (IV. 51). Dionysius, who as a foreiner is in reality much more impartial, subjects them to still more violent invectives for their shameless rapacity; from king Servius, in IV. 9, from Sp. Cassius, in VIII. 70, even from Appius, in VIII. 73, from L. Sicinius Dentatus, in X. 37.

fair purchasers was a tyrannical act at all events: and the claim to the exclusive occupation was unjust; for the law of Servius had not been restored. A new usurpation, still more oppressive to the plebeians, inasmuch as it dried up the sources of the military pay, was that the patricians gave over paying the tithe. This cannot have been done before they secured the possession of the consulship. The powerful prince who built the Capitol, assuredly did not renounce a branch of revenue so indispensable to his work. The exemption thus usurpt still existed in the year 331; when the tribunes insisted on having the public lands charged for the pay of the troops[360]: and we read that a like charge was imposed for this very purpose during the agrarian commotions in the third consulship of Sp. Cassius[61]. Though this may perhaps not be a tradition, so much as an inference of some annalist, it was suggested by a thorough knowledge of the circumstances of the case.

[360] Livy, IV. 36.

[61] It is assumed throughout the whole narrative, that at this time the possessors paid no tax; so, in Dionysius, VIII. 74, the people are willing to acquiesce in the possession of the patricians, ἐὰν δημοσιωθέντα ἴδωσι, καὶ τὰς ἀπ' αὐτῶν προσόδους εἰς τὰ κοινὰ δεδαπανημένας.

THE AGRARIAN LAW OF SP. CASSIUS, AND HIS DEATH.

One cannot help doubting whether, in all that is said of the agrarian law of Cassius, there is a single point that comes from any other source, than the desire of the later writers to give some account of so important a measure. Since the old chronicles were totally silent about the nine nobles who were condemned to death, they must at all events have been very brief on the fate of Cassius: and what should make them deem it necessary to do more than name his agrarian law? Its purport can have been nothing but a revival of that which I suppose to be the law of Servius. It must have directed that the portion of the populus in the public lands should be set apart, that the rest should be divided among the plebeians, that the tithe should again be levied, and applied to paying the army. Now this is just what Dionysius makes the senate ordain. Only by a law meant in earnest, as will be noticed presently, the carrying the measure into effect would have been entrusted to very different hands from those selected in that ordinance of the senate. In trying by induction to restore the purport of the law of Cassius, the only other thing we have to add is, that the lands divided between the orders were solely those which the state had acquired since the general assignment by king Servius, and which is still retained.

But whether the ordinance then made be ascribed to Cassius, or to the senate, it is a most perplexing riddle that the plebs should have condemned its benefactor to death: for nobody ever doubted that the assembly of the people which tried him, was the plebeian one of the tribes[362]. And probably the story that he was pronounced guilty and condemned by his own father, was only invented to cut this knot. Others, who found a difficulty in supposing that, after three consulships and as many triumphs, Cassius was still under his father's power, restricted the father's judgement to his bearing testimony to his son's guilt; whereupon the people permitted the questor to execute the sentence against him[63]: a statement evidently framed with a clear knowledge of the old law of Tullus Hostilius; according to which the judges past the sentence of death, and the people only interfered judicially in case the condemned party appealed to them. Impartial judicial rigour may perhaps have been the prominent hereditary feature of the Cassian house, even before the time of L. Cassius: after he had made it proverbial the above-mentioned story sounded credible enough.

Others kept simply to the account that Sp. Cassius was condemned on the charge of the questors: and they gave in to a strange misconception of the treaty with the Hernicans, as if only a third of their public lands had been left to them, and as if Cassius had meant to divide the confiscated two thirds between the Romans and the Latins, and besides even to give the Latins a part of the Roman public lands[64]. Others, with a

[362] Dionysius is so entirely under this mistake, that he says the questors convened τὸ πλῆθος to the ἐκκλησία, and talks of the ὄχλος that thronged to it; VIII. 77.

[63] Quaestor eum cedente populo morte mactavit: Cicero, de re p. II. 35.

[64] Livy, II. 41. I will remark by the way that in the passage, *fastidire munus vulgatum a civibus isse in socios*, the word *isse*,

correcter notion of the treaty with the Hernicans, alledged that he intended to parcel out the whole *ager publicus* between the Romans and the two allied states[365]. Such partiality to foreiners would certainly have estranged the affections of the commonalty from him; so much so indeed, that, to explain why they were not exasperated, and did not rise against him as a traitor, a tale was fabricated, that he had proposed repaying the money taken from the plebeians for the corn sent as a present from Sicily: a fiction which does not need to be refuted, since at this time, at all events, that present had not yet been made. It looks as if this feature had merely been borrowed from the proposition of Tiberius Gracchus with regard to the treasure left to the Romans by Attalus; just as the calling in the Latins and Hernicans to carry the law through by force forms a counterpart to the scenes witnest at Rome, when C. Gracchus and M. Drusus tried to compell the senate to pass their laws by the aid of the Latins and the Italian allies.

The people before whom the questors, Caeso Fabius and L. Valerius[66], impeacht Sp. Cassius, as soon as his year of office expired, was the populus; which Dionysius is never able to discriminate from the plebeian tribes, because the Greeks knew only of a democratical ἐκκλησία. The Greek terms, analogous to those of the Roman constitution, with which Fabius designated the orders, and

though it has been rightly rejected, is not to be struck out, but, as appears by the reading of the Florentine manuscript, *egisse*, to be changed into *egenis*.

365 Dionysius, VIII. 77.

66 Dionysius all along confounds the *quaestores classici* and *parricidii*: he terms those ταμίαι, whom he ought to have termed ἐφέται, and speaks of the accusers of Cassius as young men, because the questorship which had the care of the public purse, being the first step to honours, was filled by such. With regard to the questors who presided in trials of life and death, the reverse must have been the case: thus T. Quinctius held that office after three consulships:

his use of the word δῆμος for the aristocratical part of the nation[367], may probably have appeared to him the vague and erroneous expressions of a foreiner. But no one who comprehends the Roman constitution, will need a proof that no patrician could have been brought before the tribes of the commonalty, except by plebeian accusers, and for an offense against that order. Nor is there the slightest vestige that the centuries ever acted as a court of justice before the enactment of the Twelve Tables. The houses were the natural judges of their

Livy, III. 25. That Dionysius should have found Fabius and Valerius described by a Roman annalist as *minores*, because their houses were Sabine ones, is not credible.

[367] Dion commonly calls the plebs *πλῆθος*, not rarely *ὅμιλος*: *δῆμος* with him is exclusively the populus, never the plebs; though he is compelled by usage to call the tribunes *δήμαρχοι*, and only once for the sake of precise accuracy uses the term *τρίβουνοι τοῦ πλήθους*: (Zonaras, VII. 15, who, as the Excerpta shew, copies even these expressions literally from him). Among a variety of instances in which by *δῆμος* he means the populus only, are VII. 15, where he speaks of the right of the tribunes to interfere, *κἂν ἄρχων, κἂν ὁ δῆμος, κἂν ἡ βουλὴ πράττειν ἔμελλέ τι*: further on, *τὰ παρὰ τῷ πλήθει καὶ τὰ παρὰ τῷ δήμῳ καὶ τῇ βουλῇ γραφόμενα*: the nine tribunes are condemned to the flames by the *δῆμος*, VII. 17. Exc. de sentent. p. 150. ed. M. For later times in speaking of the elections he applies the word, in like conformity to the Latin expression, to the assembly of the centuries: thus in XLIII. 47: *οἱ ἄρχοντες λόγῳ μὲν ὑπό τε τοῦ πλήθους καὶ ὑπὸ τοῦ δήμου κατέστησαν* (under Caesar): compare XLIII. 51, where the *πλῆθος* is opposed to the *εὐπατρίδαι*. Now that Dion owed the advantage of this exact language to some earlier writer, is evident from the traces of the same exactness in Diodorus; particularly in XIV. 113, where *δῆμος* can only mean the curies, not the plebs; and in XII. 25, on the consular elections after the decemvirate: where he himself indeed is no less confused than Dionysius often is, but evidently had a text before him in which *τὸ πλῆθος* and *ὁ δῆμος* were accurately distinguisht: of that I shall speak in its place. That Diodorus however used Fabius may be presumed; for there can scarcely have been any other Roman history in Greek, giving so full an account of the times before the war with Pyrrhus, as that of Fabius, however concise even this might be: Diodorus too quotes him by name: VII. fragm. I.

peer, and were as ready to condemn him as his accusers could desire.

Now, it being held certain that Cassius was condemned by the same people to which he had offered money and land with factious views, both our historians have deemed it indisputable that he aspired to royal power. Indeed this was the general belief long before[368]. Yet it is clear that nothing was related of any distinct criminal acts. Dion, with his characteristic independence of judgement, asserted that Cassius was clearly innocent, and was put to death out of malice[69]: though I would not infer from this that he had met with any circumstances decisive in his favour. He knew, as we do, that the curies were at once his enemies and his judges, that they saw their possession of the public lands attackt, and that they lookt to secure their usurpations by the death of the great patriot, and by a change in the law of election. If, according to the rule laid down by L. Cassius for ascertaining a criminal[70], we ask, who was the gainer by the death of his great ancestor? the answer is, the patricians. Nor would the faction, which had Genucius assassinated, scruple to murder Cassius under the forms of law, if such a crime served its ends. This however is no proof that he was innocent. Cassius may even have aimed at kingly power from pure motives, in order to restore the Servian laws, and to put an end to the iniquities of the patricians: and if the commonalty had trusted him, it would assuredly have been a gainer by

[368] This was not only Cicero's judgement (de re p. II. 35, and in several other places), but that of the censors who melted down his statue in the year 590: Pliny, XXXIV. 14. Yet must not the opposite opinion have prevailed previously, when the remembrance of the facts was much fresher and clearer, since the statue was allowed to stand?

[69] Dion, Exc. de sententiis, 19. ed. M. p. 150: Ἔκδηλον ὅτι ζηλοτυπηθεὶς ἀλλ' οὐκ ἀδικήσας τι ἀπώλετο.

[70] Cassianum illud, cui bono?

the change. That he must have been an extraordinary man is proved by his three consulships, by the three triumphs he earned in them, by the three treaties he concluded, by the compromise he effected with the commonalty, and probably with the lesser houses. All this may have raised his views, till nothing seemed beyond his reach. The period of the sway, legitimate or usurpt, of the *αἰσυμνῆται*,—when youthful freedom gained strength under the guardianship of a ruler independent of the laws, and antiquated privileges were fain to reduce their pretensions within moderate limits,—this period had not yet past quite away among the western Greeks, though the constitutions in Greece itself had already left this stage behind them: among the Etruscans, and probably among the Italians generally, elective kings were still usual. It was frenzy in the son of Appius the Blind to dream of grasping the diadem of Italy. But in the four-and-twentieth year after the first consulship the kingly form of government was still generally regarded as the natural and legitimate one, and the new form as the work of a revolution. The remembrance of a flourishing empire and brilliant victories reposed on the times of the monarchy; and it was hoped the same fortune might return if the ancient constitution were revived. The plebeians, who, amid the general humiliation of the commonwealth, were still more violently and degradingly opprest than before, when they sacrificed on the nones to the memory of their benefactor, addrest silent prayers to the gods, that they would once more send them a king and protector[371]. There was no reason to fear the return of the Tarquins: the last king and his sons were in their graves.

Fifty years before this the patricians favoured a rebellion to prevent the consulships being introduced; because it would then have been shared by the plebeians. They now defended that office; because they were in

[371] Macrobius, Saturn. I. 13.

exclusive possession of it. Nay, so far had parties shifted their positions, the lesser houses, that had formerly been the most resolute adherents of the usurper, being now themselves opprest by a faction of the oligarchy, must have coalesced with the commonalty as partisans of Cassius.

Sp. Cassius was ignominiously beheaded[372], and his house razed to the ground. The spot where it had stood, in front of the temple of Earth[73], remained waste under a curse. There was a brazen statue of Ceres in her temple with an inscription recording that it was dedicated out of the fortune of Cassius. It is somewhat surprising that patrician magistrates should have raised such a monument in a temple subject to the immediate inspection of the ediles, a plebeian magistracy, and containing the coffers and the archives of the commonalty. If there be any truth in the story that another Sp. Cassius fell a victim to one of the tribunes of the people, that tribune, though a traitor to his order, may have consecrated his spoils there[74]. It can only have been by a descendant of the great Cassius that the statue of him, which stood till the year 590 on the site of his demolisht house, was erected: for the questors would never have spared it[75]. The Cassii, among whom in the seventh century we find Lucius, the model of a faultless judge, were without doubt distinctly regarded as descendants of the consul. Hence it is stated that he left three sons, whose lives were spared by the senate, though there wanted not voices that urged the extermination of the

[372] Scourging and beheading was the mode of execution *more majorum* for state offenses: so apocryphal is every particular in Dionysius, that he makes Cassius hurled from the Tarpeian rock; though this belongs only to sentences past by the tribunes, and was a punishment which they inflicted in person.

[73] Between the temple of Peace and S. Pietro in Vincola.

[74] See the text to notes 909-915.

[75] Pliny, XXXIV. 14, says that he erected it himself.

whole house[376]. That all the Cassii who appear in later times should be plebeians is perfectly natural. Perhaps the patricians expelled the whole house, as they had done that of the Tarquins. Or they themselves, at least after the decemvirate, when there was nothing to prevent their going over to the commonalty, abandoned the order that had shed the blood of their father or kinsman.

They were avenged by his agrarian law. That such a measure, containing all the provisions absolutely necessary, obtained legal validity, is unquestionable. Before the plebeian tribes acquired a voice in the legislature by the passing of the Publilian law, the tribunes had no power to bring forward a law of any kind: so that, when they made use of the agrarian law to excite violent passions[77], it must have been one that had been enacted, but dishonestly set aside. And this is the shape the commotions occasioned by it take throughout in Dionysius: only with him it is an ordinance by which the senate, on the motion of A. Atratinus, tried to pacify the people. He himself decidedly considers it as nothing but an ordinance of the senate[78]. Yet, though he afterward forgets what he has said, he has adopted a statement which he found in some better informed Roman writer, that it had been laid before the populus[79], and accordingly had at least past into a law of the curies; which would have been amply sufficient as a binding resignation of the pretensions it abolisht: and since it was a matter of course that the centuries would joyfully

[376] Dionysius, VIII. 80.

[77] As they did after 269 every year: Livy, II. 42 to 52.

[78] So much so, that he makes the consuls have recourse to an evasion, that as such it was only binding for a year: IX. 37.

[79] Τοῦτο τὸ δόγμα εἰς τὸν δῆμον εἰσενεχθὲν τὸν Κάσσιον ἔπαυσε τῆς δημαγωγίας: Dionysius, VIII. 76. Ἐκφέρειν εἰς τὸν δῆμον is the phrase he uses more frequently for bringing an ordinance before the soverain assembly of the centuries: but the other expression is not the less authentic.

accept the justice tendered to them, even the most careful writer might deem it superfluous to mention their assent. Now there is no ground whatever for imagining this law to have been a different one from that proposed by Cassius. Their identity however could not be recognized by those who entertained delusive notions as to the latter, or supposed it to involve a crime. Only the provision that the consuls of the ensuing year, with the ten oldest consulars of the greater houses, should see the law executed[380] cannot have proceeded from Cassius; inasmuch as the necessary effect was to make it a dead letter, which it became. Yet this very clause is so closely connected with the forms of the ancient constitution, that it can scarcely be attributed to the invention even of a learned annalist. Unless therefore this was a subsequent ordinance, designed by inaction to frustrate the purpose of the law, which it had been found impossible to withstand, Cassius, if he gave in to it, must have done so because he was tired out by opposition, and was fully convinced that the patricians would otherwise throw out his bill at all risks; so that, having at least procured a recognition of the principle, he resolved to leave the execution of the measure to better times. Indeed he could not even have brought his bill before the centuries, until it had received the assent of the senate: yet, if he let this impediment stop him, he can have had no intention of subverting the existing laws. It was by the very men commonly regarded as the champions who defended them against his treasonable attempts, that they were overthrown through an unexampled usurpation.

[380] Dionysius, VIII. 76. *Ἄνδρας ἐκ τῶν ὑπατικῶν δέκα τοὺς πρεσβυτάτους.* See above, p. 115.

THE SEVEN CONSULSHIPS OF THE FABII.

It is a phenomenon to which the Fasti of the republic afford no parallel, except at their very beginning in the honours enjoyed by the Valerii, that for seven consecutive years, from 269 to 275, one of the seats in the consulship was always filled by members of the same house. That this cannot have been matter of chance is the more certain, inasmuch as the effect, so long as the lesser houses formed a separate body, must have been that either they, or the greater houses, as an estate, were excluded. One cannot but see that this must have been connected with some revolution, by which the oligarchy designed permanently to secure the superiority they had gained, and from which, though this hope was not fulfilled, they long derived an unjust advantage, but which ended in laying a deeper foundation for the liberties of the plebeians.

The sentence against Cassius may perhaps have been carried into effect according to the forms of law by Q. Fabius and Ser. Cornelius, both of them members of the older houses[381], without any attempt made to save him; although it was an injury at once to the larger half of the ruling estate[82], and to the whole of the commonalty.

381 That the Fabii were of Sabine origin has been stated in Vol. I. pp. 304. 316, note 810: that the Cornelii were so likewise may be inferred with confidence from the *vicus Cornelius* on the Quirinal.

82 Had not the lesser houses outnumbered all the rest of the

The force which enabled the government to act thus, arose from their confederates: who perhaps were no less ready to lend their arms for putting down the disaffected, than the cantons in alliance with Bern and Lucerne were to support the burgesses, on the insurrection of the peasants in 1653. Nay, the oligarchy might reckon that the colonies in those days still unconnected with the plebs, would serve against it; as the subjects of Basle helpt the oligarchs to maintain their ground against the citizens whom they opprest[383]. The aristocracy however were not contented with their victory. They were intoxicated by it, and gave vent to their hatred in insulting and maltreating the commonalty[84]. Hereupon the latter began to wake from its lethargy; and although the veto of the curies must have kept such men as were notorious for their boldness out of the tribuneship, yet some of those who were elected may have had more firmness than was lookt for; while in others the office may have awakened powers of which they had till then been unconscious. Thus voices were uplifted from among them demanding the execution of the agrarian law. To avert this, the patricians purposely stirred up wars[85]: for, so long as the legions were in the field, the forum was empty; and the oath which bound the Roman to his colours, placed him under the unlimited discretion of his general. Thus the consul Q. Fabius led an army against the Volscians, and gained a victory with it. The booty was delivered up to the paymaster according to the military oath, and was sold by him: the produce however

patricians, they would never have had one of the places in the consulship ceded to them, while the other two tribes had the other.

383 In the commotion of 1691: Meyer von Knonau, II. p. 88.

84 Dionysius, VIII. 81: *Θρασύτεροί τε καὶ ὑπεροπτικώτεροι τῶν δημοτικῶν ἐγεγόνεσαν.*

85 *Οἱ δυνατοὶ πολέμους ἐκ πολέμων ἐπίτηδες ἐκίνουν*: Zonaras, VII. 17.

was not divided among the troops, although the plebeians served at their own cost, but was paid into the common chest of the burgesses[386], that is to say, was distributed among the curies. Such was the answer of the patricians to the remonstrance of the plebs.

But Publicola had granted the centuries the right of a free choice among the patrician candidates for the consulship[87]: and since there assuredly was no want of just men among the houses, nor of such as were inclined to avenge Sp. Cassius, the opprest lookt forward to the annual election with impatience, the tyrants with dread. The former made use of menaces and defiance, without reflecting that the possessors of power, if they have no other alternative than to fall by the law, or to save themselves by boldly violating it, will seldom be so cowardly as to let themselves be called to a severe account. For to await such an account with calmness, from the consciousness of guilt, and because it will be an expiation of that guilt, requires a strength of mind which no offender, except a very magnanimous one, can possess. Besides it is not to be denied that the right of selfpreservation does not depend on the innocence of those who are compelled to exercise it. Nay the virtuous alone are willing to forgo it; whereas others will urge in their own behalf with great plausibility, that the punishment would probably go beyond all measure, would fall on many who are guiltless, and would breed much misery. Hence a free constitution, in which the division of the powers of government is not merely apparent, must fall, when parties

[386] Malignitate patrum qui—militem praeda fraudavere. Quicquid captum ex hostibus est vendidit Fabius consul ac redegit in publicum: Livy, II. 42. The *aerarium* was entirely different from the *publicum*: the former was the treasury of the whole state, the latter that of the burgesses: the annals could not have exclaimed against the avarice of the patricians, if the money had been paid into the former. See Vol. I. notes 1106. 1293.

[87] See Vol. I. p. 530.

have become implacably hostile to each other. The best security for freedom against the revolutions which lead to despotism, is when the share which public opinion and the nation take in the government is for the most part little more than an accredited traditional fiction. Else the result is such as we witnest during the French revolution, in the contest between the majority in the directory and the legislative assembly: and even if, under a different state of things, matters are not carried so far, still in every collision between the powers in a state liberty runs a far greater risk than authority does; and evils which are often irretrievable threaten it through the rashness of its champions, who shut their ears to the counsels of the more prudent, recommending patience and conciliatory measures, in order that existing rights and institutions may outlive the time of peril, and who allow themselves to be borne along by the temptation of giving vent to their dissatisfaction.

How powerful the Fabii were is shewn by the force which followed Caeso to the Cremera. Apparently no other house could vie with them in this respect: and with their support the old tribes might venture on an attempt to make their authority absolute. The price paid for this, namely that one of the consuls was always to be a Fabius, did not deprive them of anything, provided the lesser houses were excluded. But to execute this compact it was necessary that the election-law should be changed. The procedure hitherto had been for the senate to confirm the choice of the centuries by an ordinance on the subject; which the curies adopted, and thus invested the person appointed with the imperium[388]. This procedure was now inverted; and the centuries were to content themselves with confirming, that is to say, with

[388] This point was so well establisht, that those who supposed the tribunes of the people were elected by the curies, assumed that there was a preliminary resolution of the senate. Dionysius, x. 4.

doing homage to, the consuls appointed by the senate and the curies. The first time they were convened for this purpose was in 269, to recognize Caeso Fabius and L. Aemilius: but they refused to give their assent to the abolition of their right. Dionysius indeed, who knew of no elective assembly save that of the centuries, and who regarded the plebeians as poor folks, or at the utmost as persons of middling fortune, was unable to understand that this was the train of events; and accordingly he has disfigured it into a very different story[389]. But since we know the nature of the mirror in which the image has been distorted, we can give a correct delineation of it with no less confidence that if we found it in a simple one. In this place he says, that the senate ordered the persons who were to be appointed, to sue for the consulship; under the next year more distinctly, that it preelected them[90]. The appointment in both cases is ascribed by Livy to the *patres*[91]. Beyond doubt he uses this word here, as throughout his first decad from the second book onward, having now become familiar with the old books, to denote the patrician estate: and indeed as a matter of form the approval of the curies first gave force to a

[389] VIII. 82: *Κελεύουσι μετίεναι τὴν ὑπατείαν—Καίσωνα Φάβιον—καὶ ἐκ τῶν ἄλλων πατρικίων Λεύκιον Αἰμίλιον.—τούτων δὲ μετιόντων τὴν ἀρχὴν κωλύειν μὲν οὐκ οἷοί τε ἦσαν οἱ δημοτικοὶ, καταλιπόντες δὲ τὰς ἀρχαιρεσίας ᾤχοντο ἐκ τοῦ πεδίου.* Here again we see the delusion by which he is always prepossest, that the plebeians had nothing to do with the first class any more than with the knights, and were always mere lookers-on at the elections, unless some accident gave them importance. This is the explanation he himself gives (x. 17) of the appointment of L. Cincinnatus in 294; an appointment which as a measure of the plebs would indeed be unaccountable, but which was again the result of a similar usurpation.

[90] VIII. 87: *Οὓς ἡ βουλὴ προείλετο, καὶ οἷς παραγγέλλειν τὴν ἀρχὴν ἐκέλευσεν—Μάρκος Φάβιος καὶ Λεύκιος Οὐαλέριος.*

[91] II. 42: Invisum erat Fabium nomen—tenuere tamen patres ut cum L. Aemilio Caeso Fabius consul crearetur. And soon after: Ea pars reipublicae (patres)—M. Fabium et L. Valerium consules dedit.

resolution of the senate. But in fact this, save on extremely rare occasions, was very nearly as much a mere formality then as it was afterward when nobody appeared but the lictors: for the populus always confirmed the ordinance of the senate, which consisted entirely of patricians[392]. Nor indeed was it entitled to do anything, either with regard to elections or to laws, beyond approving or rejecting what the senate proposed[93]. Hence it has often been overlookt: and Livy, where he was not treading the footsteps of some older writer, certainly conceived that the *patres* who gave their assent were the senate[94]. Hence too Dionysius on another occasion ascribes the election of one of the consuls, which had been withdrawn from the centuries, altogether to the senate[95]: whereas in another passage he says, with perfect correctness, that Appius Claudius was raised to the consulate by an ordinance of the senate, and by the appointment of the burgesses[96]. The express information that

[392] Diodorus, XIV. 113, says the first instance in which the *δῆμος* (see note 367) refused to confirm a proposition of the senate, was when the latter voted that the Fabii should be given up. This beyond all doubt is saying far too much: it is sufficiently evident however that such a rejection was extremely rare.

[93] Dionysius, VII. 38. Since the building of the city *οὐδὲν πώποτε ὁ δῆμος ὅ τι μὴ προβουλεύσειεν ἡ βουλὴ οὔτ' ἐπέκρινεν οὔτ' ἐπεψήφισεν.* By this *δῆμος* he himself understands the curies in IV. 20: *Ὁ δῆμος ἐκ τῶν παλαίων νόμων* (before Servius Tullius) *κύριος ἦν τῶν μεγίστων—κατὰ τὰς φράτρας ψηφηφορῶν.* So too in IX. 41: *τὰς φρατριακὰς ψηφηφορίας ἔδει προβουλευσαμένης τῆς βουλῆς, καὶ τοῦ δήμου κατὰ φρατρίας τοὺς ψήφους ἐπενέγκαντος,—κυρίας εἶναι.*

[94] This is perfectly manifest in his account of Numa's election: I. 17.

[95] IX. 1: *Ἀποδείκνυται Καίσων μὲν Φάβιος—ὑπὸ τῆς βουλῆς—Σπόριος δὲ Φούριος ὑπὸ τῶν δημοτικῶν.*

[96] IX. 42: *Ἄππιον Κλαύδιον—προεβούλευσάν τε καὶ ἐψηφίσαντο ἀπόντα ὕπατον.* This is far from being tautological. Livy says, III. 21: *Patres L. Quinctium consulem reficiebant.* His expressions shew that the appointment was not yet completed; and so the senate

the elections were transferred from the centuries to the curies, he himself gives us in the person of the tribune Laetorius[397], as it had been put into his mouth by some Roman annalist. Taking this fact by itself, he might deem, as he does, that an advantage had been gained by the democracy. As it stood in the Annals, immediately after the death of Cassius, he must have regarded it as a senseless misrepresentation; since it implied that the aristocracy, for the sake of increasing their power, gave up the centuries, in which he supposed them to predominate; and this point he past over. Nevertheless the positive statement that in 271 the interrex, to quiet a ferment, convoked the comitia of the centuries in the field of Mars[98], is a sufficiently clear acknowledgement that in the two foregoing years the decision had rested with other assemblies. Moreover in both those years the persons nominated by the senate were men against whom all the wishes and prayers of the commonalty were directed, and whom it would never have appointed, had they been proposed to it, any more than Appius Claudius in 283, or Cincinnatus in 294: and that there was something peculiar about their election appears also from this, that Dionysius mentions the names of their fathers along with their own; though no doubt his sole reason was that he found them so recorded in his authorities[99].

Dion Cassius too conceived that the whole body of the patricians, not the senate alone, were in exclusive

could ordain *ne quis L. Quinctium consulem faceret.* As understood by the annalists this referred to the curies: looking at it historically,—be the fact true or not,—we must conceive that the senate withdrew its resolution: so that the houses never came to a vote.

[397] IX. 46: Ἐπεδείκνυτο — τὸν (νόμον) ὑπὲρ τῆς ψηφηφορίας, ὡς (read ὃς) οὐκ ἔτι τὴν λοχῖτιν ἐκκλησίαν, ἀλλὰ τὴν κουριᾶτιν ἐποίει τῶν ψήφων κυρίαν.

[98] Dionysius, VIII. 90: Συγκαλέσας τὴν λοχῖτιν ἐκκλησίαν, καὶ τὰς ψήφους κατὰ τὰ τιμήματα ἀναδούς.

[99] VIII. 83. 87.

possession of the consular elections prior to 273[400]: for *the powerful*,—as he calls those from whom the appointment to one of the offices was then withdrawn,—is with him a usual name for the patricians, as *the eupatrids* is in other places[1]. This passage has been preserved word for word, rather through the clumsiness than the faithfulness of the writer who abridged his work. But he omitted the context: hence it is not Dion's fault, if his words should lead us to suppose that the elections had been in the hands of the patricians much longer, perhaps ever since the death of Brutus. That the change however was introduced in the year 269, is clear from the account in Dionysius of the elections from that year down to 272. Nay, we also meet with an external argument in him, which, though he was far from understanding its purport, shews that the elections in that year were noted as a great innovation in the constitution. In speaking of the consulship of Caeso Fabius and L. Aemilius, he remarks that they entered upon their office in the year of the city 270, and in the archonship of

[400] Zonaras, VII. 17: Χρόνῳ δέ ποτε—οὐκ εἴων καὶ ἄμφω τοὺς ὑπάτους ἢ στρατηγοὺς ὑπὸ τῶν δυνατῶν ἀποδείκνυσθαι, ἀλλ' ἤθελον καὶ αὐτοὶ τὸν ἕτερον ἐκ τῶν εὐπατριδῶν αἱρεῖσθαι. ὡς δὲ τοῦτο κατεργάσαντο προείλοντο Σπούριον Φούριον. He says προείλοντο on account of the *reprehensio comitiorum*: the curies appointed absolutely, —ἀπεδείκνυσαν.

[1] Zonaras, VII. 9: 'Αχθομένων ἐπὶ τούτοις τῶν δυνατῶν (against Servius)—ὡς δὲ χαλεπῶς εἶχον οἱ εὐπατρίδαι αὐτῷ. Speaking of the dictatorship, VII. 13. καινὴν ἀρχὴν ἐπ' ἀμφοτέροις αὐτοῖς (over both the estates) οἱ δυνατοὶ κατεστήσαντο. On the secession of the commonalty he talks, VII. 14, of the ἀκρίβεια τῶν δυνατωτέρων. When the plebeians lay claim to the consulship, VII. 19, οἱ εὐπατρίδαι λίαν τῆς—ἀρχῆς περιείχοντο—τοῦ ἔργου τῆς ἡγεμονίας οἱ δυνατοὶ παρεχώρησαν. It is after some writer in whom this expression prevailed that Plutarch, Publicol. c. I. speaks of the δυνατοί, and Dionysius, x. 36, of those who were χρήμασι καὶ φίλοις δυνατοί: in both passages the word refers to the patrician estate.

Nicodemus[402]. Now he only mentions the years of Rome in two other places, at the institution of the consulship, and at the close of the third century; and the Athenian archons merely at the beginning of every Olympiad, except once on a similar change, the appointment of the first consular military tribunes[3]. Just as rare is the notice of the years of the city for historical epochs in Livy, occurring only at the abolition of the monarchy, and at the end of the second Punic war. There are several instances however of his mentioning them where alterations take place in the forms of the consular power, as on the institution of the decemvirate, and of the consular tribunate, on the first violation of the Licinian law, and on the transfer of the beginning of the consular year to that of the civic[4]: our not finding the same date in him for the consulship of L. Sextius is probably owing to the imperfection of a manuscript[5]. So Tacitus tells us the year in which the questors who tried charges of bloodshedding were first appointed by the centuries: as

[402] VIII. 83: Παραλαμβάνουσι τὴν ὑπατείαν κατὰ τὸ ἑβδομηκοστὸν καὶ διακοσιοστὸν ἔτος ἀπὸ τοῦ συνοικισμοῦ τῆς Ῥώμης Λεύκιος Αἰμίλιος Μαμέρκου υἱὸς, καὶ Καίσων Φάβιος Καίσωνος υἱὸς, ἄρχοντος Ἀθήνησι Νικοδήμου.

[3] XI. 62: Κατὰ τὸν τρίτον ἐνιαυτὸν τῆς πδ ὀλυμπιάδος, ἄρχοντος Ἀθήνησι Διφίλου.

[4] III. 33. IV. 7. VII. 18. Epitome, XLVII.

[5] The seventh book begins in a very singular manner with *Annus hic erit insignis etc.* Now as a space was very often left in manuscripts for the first words in a book, that an expert penman might insert them with coloured ink, and this was sometimes forgotten afterward, I conjecture that in this place the words *Trecentesimus octogesimus nonus ab urbe condita* are wanting before *annus*, and that *hic* was inserted to disguise the mutilation. Owing to the same cause we miss the first words of the second book of Cicero's Republic, of the sixth book of Gellius, and, in the Vatican manuscripts, of the speech for Sextus Roscius. In the first decad of Livy, we depend on the correctness of a single original copy, the text of which was settled by a very negligent revision.

does Gaius every year in which the constitution underwent any change mentioned by him[406]: both do this according to the consular era, and so were following the same history of the constitution: and some annalist, whom Dionysius and Livy had before them, must have taken such dates from that history, and, accommodating them to the far more comprehensive and usual era from the foundation of the city, have set them down on all like occasions. Unquestionably too the transfer of the elective power into the hands of the curies was so great an alteration, that a historian of the consulship could not have omitted to record its epoch, even if the effects of it had not lasted above two or three years: as he registered the usurpation at the beginning of the fifth century in the same manner, although it only kept its ground for a very short time. But in the present instance the houses retained the advantage of bestowing one of the posts for full thirty years, till the ancient pretorship[7] expired in the decemvirate. This event was also doubly remarkable, since the privilege conceded to the Fabian house conferred a power on these Roman Heraclids[8], such as in the Greek oligarchies was called a dynasty[9]: though they did not possess it exclusively, like the Medontids and Bacchiads.

We assuredly are not mistaken in conceiving that the cause which averted the total subjugation of the commonalty in the year 269, was that a strong party of the oligarchy, finding themselves excluded from the consulship, united with it; whereupon the ruling faction must have deemed it hazardous to follow up their victory too violently. Often in aftertimes must the members of the

406 Ann. XI. 22: see Vol. I. p. 525. Gaius, in Lydus de magist. I. frequently.

7 See Vol. I. p. 520.

8 Fest. Epit. Fovii. Ovid Fast. II. 237.

9 Aristotle, Polit. IV. 5, V. 3.

lesser houses have reproacht themselves, if this union was the occasion of their letting slip the irretrievable moment for getting rid of the tribunate. It may however have been spared, because its importance even at that time was not yet understood; as under the Tudors several market-towns prayed to be relieved from the burthen of sending members to the lower house. The veto of the curies kept out every one who was known to be vehement and proud: but an unostentatious brave man might be let in by them through inadvertence: or the enormity of the wrongs committed may have wrought a change in a mild character disposed to pay obedience to any endurable government. It is probable that the name of the person who first discovered the strength of his office has actually been handed down; and that a C. Maenius first carried it beyond the bounds of merely warding off particular acts of oppression[410]: as another Maenius in the same office two centuries after establisht the liberty of elections.

C. Maenius demanded in 271 that the agrarian law should be executed; and opposed the levies for a war, which undoubtedly had been kindled by the ruling party[11]. He was perfectly justified, because the consuls were illegitimate: and even if they had been elected in due form, yet the war not being a defensive one, the centuries were as much entitled to a voice in decreeing it, as in passing every other law which, according to the forms of the original constitution, emanated from the senate and curies[12]. But the protecting power of the tribunes

[410] There can be no doubt that Gelenius was right in conjecturing Μαίνιος for Μάνιος in Dionysius, VIII. 87.

[11] See note 385.

[12] On the right of the curies to decide concerning peace and war, see Dionysius, II. 14, IV. 20, VI. 66: and this right must of necessity have been imparted to the centuries by the Servian constitution, as well as that of electing the supreme magistrates and of enacting laws; more especially as the army was formed by them.

extended only a mile without the gates: beyond the temple of Mars the imperium was unlimited, and the tribune was no safer than the meanest plebeian[413]. Here the consuls erected their tribunal, and ordered all such as were bound to serve to be summoned. They who did not appear had their property seized, their farms plundered or burnt. The legions were raised; but the tyrants could only compell the body: the determination of the troops not to gain any honour or booty for them appears here for the first time[14]. Derided by his soldiers, L. Valerius, one of the judges who condemned Cassius, returned home without victory. The hatred of the plebeians was redoubled by the wounds they had sustained, and by the death of their friends and comrades who had been dragged into the field. Everything points out that the greater houses now clearly perceived the consequences of the division of their order, and that a union was concluded, which was never again disturbed: nay, from this time forward the lesser houses shew the bitterest hostility to the plebeians. The senate bestowed the open seat, by the side of one of the Fabii, on Appius Claudius, who must already have shewn signs that he thirsted after that blood, in which he rioted twelve years after: for the tribunes and commonalty rose to a man against his appointment[15]. The former, enforcing their general right, of barring all acts injurious to their order[16], against

[413] Livy, III. 20: Neque enim provocationem esse longius ab urbe mille passuum, et tribunos, si eo advenerint, in alia turba Quiritium subjectos fore consulari imperio. Dionysius, VIII. 87.

[14] Dionysius, VIII. 89.

[15] Dionysius, VIII. 90: *Μετῄει τὴν ἀρχὴν κελευσθείς.* See notes 389, 390. The annals which he had before him must have spoken clearly enough of the arrangement with the lesser houses: *ἐκ τῶν νεωτέρων ἐβούλοντο τοὺς—ἥκιστα δημοτικοὺς ἐπὶ τὴν ὑπατείαν προαγαγεῖν.*

[16] Zonaras, VII. 15: *Ἐκώλυον, κἂν ἰδιώτης ᾖν ὁ ποιῶν, κἂν ἄρχων, κἂν ὁ δῆμος, κἂν ἡ βουλή.*

the whole patrician estate, forbad their assembling for an illegal election. The consuls on their side prevented the meeting of the tribes, when the tribunes convoked them[417]. As the supreme magistrates did not hold the election of their successors till just as they were retiring from office, the republic was left without a head. When it is stated however that this was the first time an interrex was appointed since the institution of the consulship[18], this assertion surely does not mean that no first senator had ever discharged this office, as well as that of warden, but intimates that A. Atratinus, who now filled it, was the first warden elected by the burgesses, or that the senate now chose the interrex out of their whole body. Another story terms him dictator[19]. Assuredly the kingly power of the interrex was not curtailed any more than the dictator's by the Valerian laws: and the presidency of such a magistrate at the elections was a point of still greater moment to the government, because it was an establisht usage for him to take no votes except for

[417] Here again Dionysius is led by his unlucky star to run just counter to the truth: VIII. 90: Ὅποτε—οἱ ὕπατοι καλοῖεν τὸ πλῆθος, ὡς ἀποδείξοντες ὑπάτους τοὺς μετιόντας τὴν ἀρχὴν (the persons nominated by the senate), οἱ δήμαρχοι, τοῦ κωλύειν ὄντες κύριοι, διέλυον τὰ ἀρχαιρέσια. ὅποτε δ' αὖ πάλιν ἐκεῖνοι καλοῖεν ὡς ἀρχαιρεσιάσοντα τὸν δῆμον, οὐκ ἐπέτρεπον οἱ ὕπατοι. He found the words πλῆθος and δῆμος used for the plebs and populus (see note 367), and applied the former to the curies, as in II. 60: compare note 362. I also suspect, and have so stated it, that the consuls stopt the meetings of the tribes altogether. If they interrupted any elections, it must have been those of tribunes and ediles.

[18] Dionysius, VIII. 90. The mention of Sp. Larcius also as interrex is a part of that confusion by which he, as well as A. Atratinus, was regarded as the first elective *custos urbis*. Through a retrospective operation of the same circumstance, the fabulous amplifications of the stories of the first two dictators represented Sp. Larcius as appointed lieutenant by his brother Titus, and A. Atratinus by A. Postumius: see above, p. 123.

[19] Lydus, I. 38. Hence the statement in Dionysius that it was disputed whether a dictator or interrex should be appointed.

persons proposed by the senate[420]. This alone can explain the importance attacht by the oligarchal party, so late as in the fifth century, to placing the elections under the superintendence of this magistracy, which continued to be the exclusive property of the patricians. A dictator might use force, but had no pretext for restricting the votes in the same way. However the centuries now were at least assembled in the first instance; and C. Julius, a member of the lesser houses[21], was proclaimed as elected by them: perhaps his collegue Quintus Fabius was so likewise. A formal arrangement, by which they regained the choice of one of the consuls, and were forced to give up the other to the curies, manifestly preceded the election of Sp. Furius for the following year, 273, when Caeso Fabius was appointed a second time by the senate and burgesses[22]. For such now continued to be the practice down to the decemvirate[23]. The nominee of the patricians was deemed the superior in rank, to whom the other was attacht as his collegue: thus we find M. Fabius in 274 distinguisht above his brother magistrate; and in like manner Appius Claudius in 283[24].

[420] See Vol. I. p. 341.

[21] The Julii were among the houses on the Caelian: see Vol. I. note 765, and their Alban origin is demonstrated by the extremely ancient inscription discovered a few years ago in the theatre at Bovillae, where they make their offering *leege Albana*. Dionysius, VIII. 90, fancied he had found out that they were distinguisht on account of their party-spirit: Γαίον Ἰούλιον ἐκ τῶν φιλοδημοτικῶν. Lydus, I. 38, utterly perverts the relation in which the two consuls stood: he looks for a senator in the one, for a plebeian in the other; and of course a Julius must have had the preeminence.

[22] Zonaras and Dionysius, quoted in notes 400 and 395. The latter was aware that there had been a compromise: συνέπεισαν ἀλλήλους ἀφ' ἑκάστης μερίδος ὕπατον αἱρεθῆναι.

[23] It is at least exceedingly probable that the case was the same in the year 316: see below, note 917.

[24] Livy, II. 43: (Patres) M. Fabium consulem creant: Fabio collega Cn. Manlius datur.—56: Patres—Appium Claudium—consulem

But in other years also the appointment of one consul by the patricians is distinctly mentioned[425]. Of course there must have been a show of mutual concession. The patrician consul was to be confirmed by the centuries; as it was indispensable that the one chosen by the centuries should be by the curies. We may be equally certain that no regard was paid to the centuries, if they refused such a recognition: in such a case it was voted for the sake of form by the clients[26].

These were so numerous in the classes, that Livy fancies they were even able to decide the elections of the tribunes in conformity to the wishes of their

faciunt: collega ei T. Quinctius datur. Dionysius, quoted in note 396, speaks of Appius alone as proposed by the senate: and the annalist who supplied Livy with materials for making the tribune Laetorius say, II. 56, *a patribus non consulem sed carnificem ad vexandam et lacerandam plebem creatum esse*, unquestionably did not regard his election as the act of the people. At this time the nominee of the curies, as at first the consul from the Ramnes, and subsequently the one out of the first two tribes, was the *consul major*; agreeably to both the explanations given by L. Caesar in Festus under *Majorem consulem:* he was the first appointed, and received the fasces first.

[425] In the story, which Dionysius, x. 17, has utterly misrepresented, of the illegal appointment of Cincinnatus in the room of P. Valerius (see notes 389 and 676), the previous choice of the senate is no less clearly discernible in the secret consultations of the leaders of the senate, than the election by the curies in the pretended decision by the knights and the first class. The same thing is also evident in Livy, III. 19: *Summo patrum studio—consul creatur.—Perculsa erat plebes, consulem habitura iratum:* whereupon at the end of the year *patres—et ipsi L. Quinctium consulem reficiebant:* III. 21. In the year 286 *plebs interesse comitiis consularibus noluit: per patres clientesque patrum consules facti:* II. 64.

[26] The refusal of the plebeians to confirm the consul chosen by the curies is represented by Dionysius as if they had quitted the field of Mars in dismay: IX. 43, X. 17. The same thing happens in the year 269: VIII. 82. Compare Livy, II. 64, quoted at the end of the foregoing note.

patrons[427]. The appointment of Volero Publilius however, who for this very reason wisht to transfer the election of the tribunes to the tribes, proves that the commonalty was already able to bring in men who must unquestionably have had the votes of the clients against them. The truth seems to be, that the clients on their part were always able to place one or more dependents of the patricians in the college. It is quite incomprehensible however how Volero could attain to the office, I will not say a second time, after having moved a law dangerous to the ruling party, but even before, when the patricians had personal vengeance to expect from him, if the confirmation by the curies had still been requisite. So that they must have given up this power previously: and this probably took place by way of compensation at the compromise mentioned above.

Henceforward, until the passing of the Publilian law, the college of tribunes embraces the most decided leaders of the opposition, along with profest adherents of the government; the latter often preponderating in number: for, as will be shewn lower down, till the middle of the fourth century questions were not decided by a single veto, but by the majority in the college. Thus it outvoted Sp. Licinius, who in the same year, 273, wisht to prevent legions from being raised, unless the agrarian law were carried into effect. The troops under Sp. Furius fought cheerfully against the Aequians for the honour of the man whom their comitia had chosen: and he rewarded them for the victory they gained by sharing the booty among them. But those whom Caeso Fabius led against the Veientines[28], did not look upon him as a

[427] II. 56: (Lex Publilia) quae patriciis omnem potestatem per clientium suffragia creandi quos vellent tribunos auferret.

[28] Thus Zonaras, VII. 17, and Dionysius, IX. 2: so also the manuscripts in Livy, II. 43; not the author, whose meaning unquestionably requires the change introduced by Sigonius, *ducendus Fabio in Aequos: in Veientes etc.* But that the former is the correct view is

legitimate consul: assuredly the judge who condemned Cassius had not gained the votes of the centuries to confirm his election. In order that he might not obtain a triumph, the infantry threw away the victory when already certain: nay, they abandoned their camp to the astonisht foe, and retreated to Rome. Hereupon the Fabii could not disguise from themselves that it was a melancholy honour to have the command over men so incenst that they chose rather to perish than to conquer. The senate and curies might again raise M. Fabius to the consulship for the next year, 274: but the imperium was powerless against such obstinacy. They resolved therefore to make friends with the commonalty[429]: to which the change in their relation to their order might be an additional motive; since the houses cannot possibly have been willing to bind themselves any longer to bestow the seat reserved for their appointment on a Fabius exclusively. It seems as if the recognition of the consul elected by the curies had again been refused this year. Yet, though one of the tribunes had opposed the levies, the impending danger awakened the national spirit, and moved the soldiers to swear obedience to him as well as his collegue, and to pledge themselves for the victory if he would trust them. Quintus Fabius fell among the troops, who sealed their good faith with their death: his blood, the heroism of his whole house, who in the hardfought battle set an example to the army, completed the reconciliation. Marcus Fabius distributed the wounded among the dwellings of the patricians: his own house took in the most. Two months before his year ended he resigned[30].

proved decisively by the superiority of the Veientines after the campaign, while the Aequians were so far from this that Rome was able to turn all her forces against the others.

[429] Neque immemor ejus quod initio consulatus imbiberat, reconciliandi animos plebis: Livy, II. 47.

[30] Dionysius, IX. 13. The fact is no doubt true: the clumsy explanation belongs to him.

Without doubt the senate, as after the death of P. Valerius in 294, wanted to bring in a consul illegally appointed in the room of Manlius, the one chosen by the centuries, who had fallen; and M. Fabius refused to act in concert with them. So totally had everything veered round within five years, that the patricians withdrew their votes from the Fabii, and the centuries of their free choice raised Caeso a third time to the consulship[431]. As a number of members of Charles the Second's long Parliament were animated at its close by passions and feelings much nearer to those which they had condemned than to those which they had entertained at the beginning of it, so was it with the Fabii. Caeso, who had pronounced sentence of death against Cassius because his agrarian law was an encroachment upon the aristocracy, now, as soon as he entered upon his office, recommended that it should be carried into execution without waiting for another summons from the tribunes. Nobody listened to him. He and his house were reviled as traitors and apostates, a thousand times worthier of punishment than Licinius and Pontificius. This hightened the zeal of the commonalty to shew them confidence and favour. The men of the military age gathered joyfully under Caeso's

[431] That such was Dion's account may be satisfactorily ascertained in spite of a gross blunder in Zonaras, where, in Wolf's edition, and, as I learn from Hase's kindness, in three of the Parisian manuscripts, the sentence runs: *ὁ ὅμιλος στρατηγὸν τὸ τρίτον τὸν Μάλλιον εἷλετο*: even Zonaras cannot have meant to speak of Manlius, whose death is related above; but his pen might easily slip. The mistake is so palpable that a copier might naturally try to get rid of it: hence the erroneous change in one manuscript, *στρατηγὸν ἕτερον εἷλετο*, which has unfortunately been adopted in the Louvre edition. The words *τὸ τρίτον* shew that none but Caeso can have been meant, not any other person, such as T. Virginius. Dionysius had a mention of the *πλῆθος* before him, which he could not understand: hence he says, IX. 14: *Τοῦ μεσοβασίλεως συγκαλέσαντος εἰς τὸ πέδιον τοὺς ὄχλους.* Livy believes in the reconciliation with the plebs, but not in the quarrel with the patricians: *Non patrum magis quam plebis studiis Caeso Fabius—consul creatur.*

banners, marcht with him even beyond the borders of the Aequians, and then speedily returning saved the army of the other consul, which was surrounded by the Veientines. After this glorious campaign Caeso renewed his conciliatory propositions. When every hope of obtaining a hearing for them had vanisht, his house took a resolution, such as among the Greeks had led to the founding of some very flourishing towns, to depart with their dependents and adherents from a place where they could no longer live in peace, and to found a separate settlement, which might at least be of use to the people they were so intimately allied to by blood and birth. In the definition quoted above, a distinction is drawn between such settlements formed by seceders, and the colonies founded according to the will and decree of the soverain state[432]; which shows that the former were not unheard of in Italy. The secession of the plebs would have given birth to an independent town, if the wound had not been healed in time.

For that the Fabii were not merely an advanced guard, occupying a fort in the enemy's country for the sake of ravaging the territory of the Veientines, of interrupting their husbandry, of affording a near and safe asylum to their slaves, and of inflicting manifold calamities such as a fortress of this kind, if held all the year through, like Decelea, must bring on a city, even when its walls are impregnable[33];—that they formed a settlement on the Cremera with their wives and children;—is unequivocally implied by Gellius, where he says, and assuredly not without the express authority of ancient books, that the three hundred and six Fabii perisht along with their families on the Cremera[34]. Even if we had not this statement, a candid reasoner would draw the same inference

[432] See note 80, p. 44.

[33] An ἐπιτειχισμός.

[34] XVII. 21: Sex et trecenti patricii Fabii *cum familiis suis*—circumventi perierunt.

from the unanimous tradition, that but one individual, who had staid at Rome, survived the destruction of the house. For Dionysius has proved with needless minuteness that it is impossible there should have been but one boy living in a body of families that sent forth three hundred and six soldiers; though Perizonius on the other hand is indisputably right in rejecting his explanation, that this tradition referred only to the families of the three consular Fabii[435]. Nor do I by any means believe that the progenitor of the Maximi was left at Rome on account of his youth. This can only have been a conjecture which arose as the tradition gained ground: nor was it a happy one, since he was consul but ten years after. He must have filled this post as the nominee of the curies; for his collegue speaks in behalf of the claims of the plebeians[36]. As warden too he appears as the opponent of the tribunes when they bring forward a most salutary proposition. Hence it seems we may safely infer that he was a man in the prime of life, and of a resolute character, who persisted in the previous sentiments of his house, and separated from them when they emigrated. It is possible however that at that time he may not have been living at Rome, but at Maluentum[37].

But though all the rest of the Fabii perisht, along with their whole families, the number three hundred and six, like the numbers in the census and all similar ones, beyond a doubt only embraced the serviceable men, not the boys or the aged, still less the females. Livy's assertion, that there was not one among them whom the senate in its best days would not readily have acknowledged as its chief, is a rhetorical exaggeration, the value of which everybody can perceive. So will it readily be allowed, that the clause stating they were all patricians is of no greater moment: this has been shewn already

[435] Animadvers. 5. p. m. 194. Dionysius, IX. 22.

[36] Livy, III. 1.

[37] Festus, Numerius.

by Perizonius. But beyond a question they must all be deemed to have been Fabii properly so called, as the tradition most positively terms them, and to have belonged to the house, even if only a small part of them formed it. There may have been many among them born of marriages of disparagement, and still more freedmen, who in old times were undoubtedly reckoned among the members of a gens[438]. Perizonius supposes that the Fabii in this place were as improperly called so as those in the story of Remus, and that the number mentioned included the clients, who left Rome along with them[39]. But though the numbers of four thousand, nay, of five thousand[40], at which these are estimated, may be greatly exaggerated,—unless these numbers may include the women and children,—still it is impossible that a band of three hundred men should have kept their ground as they did in the Etruscan territory, and become an object of alarm to the Veientines. The largest part of this train were probably plebeians, who were not unwilling to defend the estates they might acquire on the borders.

At the beginning of spring on the ides of February, Caeso, who was still consul, led them out of the city to their settlement. This day, as well as that on which they perisht, continued for ever accursed[41]. Without doubt they had previously assembled and sacrificed on the Quirinal, where their gens was wont to celebrate its religious

[438] To the reasons already brought forward in support of this opinion (see Vol. I. pp. 321. 324) may be added that the freedwoman Fecennia had the *enuptio gentis* granted to her: Livy, XXXIX. 19.

[39] Animadvers. p. 200.

[40] Dionysius, IX. 15. Festus, Scelerata Porta.

[41] Ovid (Fast. II. 195) must have mistaken the day of their departure for that of their destruction; since the latter is universally and most positively said by other writers to have been the same which afterward acquired a still more disastrous celebrity from the taking of Rome, and which is likewise held to have been that of the battle on the Allia. The day on which the race of heroes left Rome was also not to be forgotten.

worship[442], and where perhaps they all still dwelt[43]. From thence they marcht through the Carmental gate, which lay next to that hill, and at its foot[44], along the road from which they were never to return. All the Roman gates had two arches, one for persons going out of the city, the other for such as were coming in: each kept to his right hand. Five hundred years past away, and no Roman, whose mind was swayed by the faith of his ancestors, went out of the city by this gate[45].

The story of the exploits which they achieved, sallying forth from their fortress on the Cremera, and of their destruction, belongs to the history of the changeful war against Veii.

442 Livy, v. 46. See Vol. I. p. 316.

43 As may be inferred with regard to the Cornelii from the Vicus Cornelius, which retained its name even down to the sixteenth century.

44 Its site was on a line drawn from the corner below Ara Celi to the foot of the Quirinal, not far from Macel de' Corvi, and is now covered by rubbish to a great highth. At the laying out of Trajan's Forum the walls between this gate and the Quirinal, if not the gate itself, must have been thrown down, and so a way was opened which no superstition forbad. As the Fabii marcht out at this gate on their way to Etruria, it is clear that there were no projecting walls then going down to the Tiber; else they would have had to enter through another to get to the bridge.

45 However near a person lived to it, he went round to another. This is the meaning of Ovid's couplet: Fast. II. 201:

Carmentis portae dextro via proxima Jano est:
Ire per hanc noli, quisquis es: omen habet.

Into the town, through the other arch, everybody came without scruple; as we see by the procession in the second Punic war: Livy, XXVII, 37.

THE VEIENTINE WAR.

This is the war which Dion charges the patricians with having excited for the sake of employing the commonalty. The Fabii, at that time the heads of the oligarchy, must accordingly have been the authors of this piece of statecraft: this guilt they expiated fearfully, and, as not seldom happens, after having done everything to atone for it.

During the first two years, 271 and 272, the hostilities seem to have been of little importance. I have already mentioned the unfortunate turn they took in 273, owing to the internal dissensions of the Romans. The infantry under Caeso Fabius agreed together that their general, whom they did not acknowledge as consul, should gain no triumph in a war which he and his house had stirred up, and which the centuries had not decreed. The cavalry, part of them as patricians, part carried along by the spirit which characterizes such troops, had broken the Etruscan line. But the cohorts refused to follow: in spite of the consul's vehement exhortations that they would at least maintain their ground, in spite of his entreaties, of his threats, they gave way, abandoned their camp to the enemy, and soon fled in disgraceful confusion to Rome. This calamitous day had all the consequences of a defeat. The Etruscans, who were just at the summit of their power, expected that they should completely subdue Rome, torn as it was by discord: many

magnates came with their serfs[446] as volunteers: and in a land where forein allies were allowed to raise mercenaries, a native city might collect as many as she could pay. Against this threatening force the next consuls, in 274, called forth all the resources of the republic and of her allies. The success which Sp. Furius had gained the year before through the goodwill of his troops, seems to have led to a truce with the Aequians, without which the Latins and Hernicans could not have sent any aid.

The account of this campaign looks very much as if it had been taken from the domestic memoirs of the Fabian house: nay, the statement that Marcus Fabius delivered the funeral oration over Quintus and over his collegue[47], hardly leaves room to doubt that the annalists knew of a panegyrical speech ascribed to him. That this however had at all events undergone considerable changes, is clear from the numbers of the Roman army, and from the mention of the *pilum* as used in the battle. Yet these gigantic numbers are of the same nature as similar ones in the legends of the kings[48]; while in the story there are other features, every trace of which was obliterated in the state of things soon after the Licinian law, and which were antiquated even at the time of it[49];

[446] Συνεληλύθεσαν ἐξ ἁπάσης Τυῤῥηνίας οἱ δυνατώτατοι τοὺς ἑαυτῶν πενέστας ἐπαγόμενοι. Dionysius, IX. 5.

[47] Funera—collegae fratrisque ducit, idem in utroque laudator: Livy, II. 47.

[48] See above, note 75. In the war of Tarquinius against Suessa Pometia the army is estimated, just as here, at 72000 men: Vol. I. note 1136.

[49] The calling out the reserve and the city militia;—the proconsul (ἀντιστράτηγος: Dionysius, IX. 12) T. Siccius (Sicinius) was assuredly mentioned as the commander of the former;—the distinction between the contingent sent by the colonies and subject towns, and that from the allies. On the other hand the calculation of the amount of the army in IX. 13, where these contingents are regarded as united and equal to the Roman troops, and each legion is estimated at 5000 men, is of a late date.

so that history may adopt this account as being substantially a very ancient monument, without however pledging itself for the truth even of such parts as do not present the slightest shade of improbability.

It is related that the two consular armies had occupied separate camps. This probably contains a historical reference to the fact, that the cohorts under M. Fabius did not recognize him as their legitimate leader in the same manner as those commanded by his collegue. But when a flash of lightning had fallen on the pretorium of Cn. Manlius, had shattered the altar to pieces, and had slain his warhorse, and it was necessary to quit a place devoted to destruction, the camps were united. The Etruscan seers declared that the Roman general had hereby involved both armies in the doom which he had tried to escape. Their countless host surrounded the Romans, whose generals made no attempt to hinder them, waiting till the troops under Fabius should from their hearts confirm the compulsory oath they had taken to a person not invested with a rightful imperium. After a while this took place. When the soldiers saw themselves cut off from Rome, and heard their foes scoffing at their cowardly inaction, they impetuously demanded to be led forth, and swore not to leave the field except as conquerors. On this day the Fabii were an example to the whole army. Quintus fell: but the wing headed by Marcus was victorious, and checkt the flight of the other, which had given way on its commander's receiving a wound. Meanwhile the camp had been stormed by a part of the Etruscan army. The triarians[450], who guarded it, were driven back on all sides

[450] There cannot indeed have been any triarians in the line of battle at that time, when the array of the legion still resembled that of the phalanx: but they may have existed ever since the institution of the Servian centuries, and have been employed in guarding the camp, and may even have borne the same name, as being composed of ten centuries from each of the first three classes: see Vol. I.

to the pretorium, and would have been overpowered, unless Manlius, who had returned into the field, after having his wound bound up, had brought them reinforcements. He laid a plan for the utter destruction of the intruders. While they were taken up with plundering, he posted troops at all the gates of the camp: they strove to force their way out: Manlius fell: his collegue, whom the retreat of the enemy allowed to bring up his wing, opened a gate, through which they threw themselves into the plain. It was a victory indeed: but Marcus Fabius could not have returned in triumph, even if he had not brought home the bodies of Quintus and of his collegue.

The only advantage gained was, that Caeso could be sent in 275 against the Aequians. But the single army which took the field against the Veientines was too weak. After losing a battle it was surrounded, and would have been compelled to lay down its arms, unless Caeso had come by forced marches to its relief. Soon after, when the troops were disbanded, the Etruscans unexpectedly made their appearance, and ravaged the country as far as the fort on the Janiculus.

The consular year at that time coincided almost exactly with that of the Olympiads: and so we may understand how the Fabii set out to build their fortress on the Cremera under the same consulship, though it was the middle of February. They continued to be Romans in heart: by their emigration they avoided an open rupture with their fellowcitizens: and they carried on a ceaseless war for the good of Rome, and scoured the whole territory of Veii to its remotest corners. The Veientines

p. 479. Their purpose being to defend walls and palisades, javelins would be appropriate weapons for them, along with their spears and swords: and their javelin may already have been the *pilum*, or but little inferior to it in excellence. Hence the name of *pilani*. When a guard was not needed for the camp, they would stand by their comrades in the phalanx.

again raised succours from the Etruscan states, and besieged the fortress, but were defeated by the Consul, L. Aemilius. Hereupon a peace was concluded, or rather a truce for a cyclic year: for before the consuls for the following year, 277, went out of office[451], on the eighteenth of Quinctilis, the Fabii fell; and at the same time the consul T. Menenius was in the field.

While the day on which the Fabii perisht is a matter of unquestionable tradition, the manner of their destruction is wholly uncertain. History tried to lighten the grief excited by a woful calamity, and perhaps to throw a veil over atrocious guilt, by adopting the splendid fictions of poetry. Of these we know two, the first of which Dionysius treats with contempt[52]. In order to offer up a sacrifice in the chapel of their house, as a sacred usage enjoined, the three hundred and six Fabii set off for Rome. They went to perform the pious ceremony as in time of peace, without arms or warlike array. The Etruscans, knowing their road, had stationed a mighty host assembled out of their whole nation on the right and left of it, placing troops in ambush to cut off their retreat. When the unsuspecting heroes reacht the spot, these rusht forth. Thus they found themselves encompast on all sides, and fell slaughtered by innumerable darts; not by the sword or spear: for, though they were unarmed, none dared to come near them. In this story a sacred truce is presupposed, such as took place during the Greek national festivals: the Fabii trust in the universal reverence for it; and it was an outrage in the Veientines, after being apprised of it, to impede or attack the pious procession. So that the objections of

[451] Cum haec accepta clades esset, *jam* C. Horatius et T. Menenius consules erant, says Livy, II. 51: as if it had taken place at the beginning of their consulship. But as the new consuls entered on their office at the beginning of Sextilis, it is clear that the misfortune happened in the last month of their magistracy.

[52] IX. 19.

Dionysius are groundless: nor ought he to have askt how the fortress, with its four thousand defenders, came to disappear without any mention of it. He should have remembered that only the heroes, not the bands of Achaeans, are spoken of in the battles of the Iliad: nay, even at Thermopylae none are so but the Spartans. If the poet did not totally forget the train that staid behind, he lookt upon it as left destitute, and unable to hold out after the fall of its chiefs.

I think, if Ovid had known this story, he would have chosen it for its beauty instead of the other[453], which had enough of a historical air to satisfy both our historians, though in it too the fortress is overlookt. The single house of the Fabii, as Livy tells it[54], had gained repeated victories in the open field over the most powerful town in Etruria: they were grown secure and careless. Hence they let themselves be lured to follow some herds of cattle, driven under a weak escort to a mountain pasture, where many thousand men lay concealed among the woody hights around. The soldiers feigned to fly: the oxen set off running in a fright when chased by the knights; who were thus scattered about over a large space along the skirts of the forest, when warcries and a shower of javelins burst from all sides upon them. Many of them fell: the rest gathered in a body. Now however the enemy started up and rusht down from the hights: the closer they drew in their circle, the deeper were the lines of the assailants. Wherever the Romans advanced sword in hand, they gave way: for who durst encounter them in open combat? Darts and stones, slung at them from afar, laid the heroes prostrate, and covered them, as Caeneus was buried under pieces of rock[55].

[453] Fast. II. 195-242. [54] II. 50.

[55] In the historians they break through the enemy, get to a hill, and do not fall till they reach it: this is a spinning out of the story which Ovid keeps clear of. The other additions with which

In whatever way the Fabii may have perisht, without doubt they were sacrificed, as L. Sicinius was with his cohort, as Aristodemus was by the oligarchs at Cuma, and as the Samians on board the forty triremes were sent by Polycrates where they were to be destroyed*. For the consul T. Menenius was encampt a short way off at the time[456]; and he was condemned as the guilty cause of the disaster. In this instance however the punishment of treachery did not linger. Menenius himself was attackt and totally defeated[57]: and had not the victors delayed to plunder the camp, few of the fugitives would have reacht Rome. Such was the consternation, that even the fort on the top of the Janiculus was evacuated; and here the Etruscans pitcht their camp. But, as the bridge had been broken down[58], the city was secure against any sudden assault: and as soon as C. Horatius had returned from the Volscian borders, a siege was no longer to be dreaded.

Fourteen days after the disaster on the Cremera, on the first of Sextilis, A. Virginius and Sp. Servilius, the consuls with whose names the year 278 is designated in the Fasti, entered upon their office[59]. The Etruscans

Dionysius turns it as far as he can into a commonplace narrative are in the very worst taste.

* Dionysius, VII. 5. X. 44. Herodotus, III. 44.

456 Cum haud procul inde stativa habuisset: Livy, II. 52: thirty stadia (four miles) off: Dionysius, IX. 23.

57 This defeat is mixt up with the destruction of the Fabii into one great battle by Diodorus, XI. 53, but no doubt merely through his own stupidity.

58 Assuredly the sole reason of its being constructed without iron was that it might be speedily taken to pieces.

59 Dionysius, IX. 25. If this date was found recorded in the old yearly registers, some alteration had taken place, and the preceding consuls must have resigned. Perhaps however it was merely some careful annalist that mentioned the usual time of the change of officers, to guard his readers from being misled, by finding two different consular years, into supposing that events, which beginning on the

frequently crost the Tiber, and ravaged the country without opposition. The peasantry had fled into the city with all their goods, even with their cattle; which were driven out however under an armed guard, on the side away from the river, into the stubblefields under the walls. Ere long the audacity of the Etruscans mounted so high, that they fancied they might fall upon them, and carry them off even here. But in so doing they fell into an ambush near the temple of Hope, a mile from the city on the Lavican road[460]. This skirmish put a stop to their inroads; and the Romans now took up posts before the gates[61]. One camp was before the Colline gate: that of the other consul must have been by the Porta Naevia[62], to keep up the communication

18th of Quinctilis did not occupy many weeks of the same summer, were distributed through two natural years. Dionysius overlookt this hint: for he fancies just after, that the cause of the scarcity was that the ground had not been sown in consequence of the Etruscan ravages.

[460] On the situation of the ancient temple of Hope, see Nardini, II. p. 18. I have no doubt that the ambush into which the Etruscans under Porsenna are said to have been drawn (Livy, II. 11), is this very engagement, with which, as was often the case, the other legend was enricht, though from some fuller narratives. The two battles, that by the temple of Hope and that by the Colline gate, were placed by one set of annals in the official year 277, by others in 278: hence they appear in Livy under both years, as if there had been four of them,—the second time without mention of the places: compare p. 92, note 189. They belong to 278; most decidedly so the battle by the Colline gate, with which the attack on the Janiculus was immediately connected, being a rapid attempt to profit by the advantage just gained: but the case is undoubtedly the same with the former fight: the interval between the 18th of Quinctilis and the end of the month being so very short.

[61] We are just as much entitled as our predecessors eighteen hundred years ago, to state points of this sort, which are implied in the course of events, whether we find them related or not.

[62] Under the bastion of Sangallo. This appears from the state of the case, and from the mention of the Porta Naevia in the story as transferred to the war of Porsenna.

with Ostia, and to cover the country. At the Colline gate an attack made by the whole Etruscan army, which had come over on rafts, was repulst. But this advantage afforded no relief from famine. The harvest that had just been got in had been destroyed or carried off from the threshing-floors and barns: and no supplies could be brought up the river into the city, which was crowded to excess with the fugitives. The extreme distress required a desperate resolution. On the day after the engagement, the two consular armies crost the Tiber. Servilius tried to storm the Janiculus; but its steepness frustrated all the efforts of his soldiers. They gave way, and would have been driven into the river, unless Virginius had brought up the right wing over the hills, falling on the flank and rear of the already victorious foe[463]. Hereupon the others took courage and made another attack, which at last was successful. Only a part of the Etruscans had the good fortune to regain the hight of Montorio: but even these left the fort and their camp during the night. The stores found there may perhaps have alleviated the wants of the city: and this may have given rise to the tale about Porsenna's camp.

After the retreat of the Etruscans, the historians speak of a peace[64]: and that hostilities were suspended is also probable from the reappearance of the tribunician commotions, which lost all their force when the country-people were assembled under the standards, and absent from the forum. There cannot however have been anything more than a truce, probably for ten months: since P. Valerius, the consul of the next year, 279, again defeated the

[463] The annalist therefore, whom Dionysius followed in saying that Virginius led the right wing, thought that he marcht through the city, crost the river after the army of Servilius, and then past over the hights above S. Onofrio.

[64] After the battle on the Janiculus, *urbi cum pace laxior annona rediit:* Livy, II. 52: and in the following year, *Veiens bellum renatum:* 53.

Veientines, assisted by an army of Sabines, before the gates of Veii. Hereupon in 280 peace was concluded for forty years: and if there be any ground for the statement that they had purchast the sparing of their country previously by furnishing the Roman army with pay and provisions*, the conditions of the treaty must have exacted some compensation for the severe hardships of the war. Perhaps this was the time when the seven *pagi* were regained; the restoration of which by Porsenna must have been acknowledged to be a groundless fable,—even if the rest of the story of his war had contained any thing beside mere legendary tradition,—a fable evidently intended to soften the mortifying recollection that these districts had for a time been separated from the Roman territory.

For the favourable result of the war, the Romans were without doubt indebted to that waged by Hiero against the Etruscans; the memory of which is preserved by the helmet consecrated at Olympia, as well as by Pindar's ode. Veii was equal to Rome in extent, and assuredly far richer, as its buildings were finer[465]. It could hire troops for its wars, and was compelled to do so: for its own forces would have been no match for Rome, its peasantry being serfs, its subjects opprest and disaffected. In the last campaign these mercenaries were no longer raised from their own countrymen: for all the resources and thoughts of the sea-towns were turned to their own affairs, by the decisive overthrow of their fleet, which probably took place shortly after the defeat on the Janiculus[66]. Indeed they were so far from being able to send any succour, that their recruiters were enlisting all the freebooters who were disengaged.

* Dionysius, IX. 36.

[465] Both towns are compared in size to Athens by Dionysius, II. 54, IV. 13. For the fine buildings at Veii see Livy, V. 24.

[66] See above, note 205.

INTERNAL HISTORY FROM THE DESTRUCTION OF THE FABII TO THE FIRST PESTILENCE.

As soon as the pressing danger was removed, two of the tribunes impeacht the former consul T. Menenius for having left the Fabii without assistance. Their object was merely to get a declaration of his being guilty, not to take vengeance on an offender in behalf of whom his father's memory pleaded. Hence the penalty was fixt at only two thousand ases, not more than a knight's yearly pay: and a sum many times as large would have been raised by his gentiles and clients. Thus far therefore his condemnation was of no importance: and in times of distraction such a sentence, pronounced by a court governed by the spirit of the opposite faction, rather raises a man in the estimation of his own. Hence we are perplext to find that it broke the heart of Menenius: he shut himself up in his house, and died of grief. But it is no less incomprehensible that the tribunes should have been able to accuse him before the tribunal of their order for a matter not affecting its rights: though we may easily suppose that they brought their charge before the curies. And if these sacrificed him, for the sake of washing off their own guilt, if with vulgar thoughtlessness they estimated the sentence by the insignificance of the penalty, we can conceive that Menenius, who may have known that many of his judges, as far as wishes

and commands went, were more culpable than he, should have sunk under his shame.

Henceforward we have a succession of tribunician impeachments, year after year. The next was aimed against Servilius, through whose rash attack on the Janiculus torrents of precious blood had flowed. He was acquitted, as was reasonable: in his case too it seems that the curies must have been the judges. It was before the commonalty however that, as soon as peace was concluded, in 281, the tribune Cn. Genucius summoned the former consuls L. Furius and C. Manlius, because they had refused his demand that they should give effect to the agrarian law: a demand for which there was an immediate occasion, if any territory was gained by the peace. In this case the plebeian estate, against which the offense was committed, was entitled by the general Italian law of nations[467] to decide: and perhaps there may also have been some recent arrangement expressly confirming this right[68]. The consuls defense was, that the law did not relate to them, that it had imposed a charge on the immediate successors of Cassius by name, for the nonfulfilment of which they alone at all events ought to have had to answer[69]. Even judges under no influence of passion

[467] From the legend about the kinsmen of Tatius, down to the story of the young men who committed an outrage against the envoys from Apollonia (Val. Max. VI. 6. 5), Roman history is full of instances of this rule. The first authority in favour of it that happens to occur to me is in Dionysius, V. 50, referring to a period chronologically in the middle between those two events.

[68] The tribune Laetorius in Dionysius, IX. 46, adduces as an instance that the patricians had already brought themselves to make sacrifices, ὡς ἔδωκεν ἡ βουλὴ τῷ δήμῳ ἐξουσίαν κρίνειν οὓς ἂν αὐτοῖς δόξειε τῶν πατρικίων: this assuredly cannot be referred with certainty to the impeachment of Coriolanus, which is said to have occurred long before, and to the Icilian law, but like the accompanying statement, cited in p. 181, note 397, concerning the law of election, may allude to a fact which has disappeared out of history.

[69] Dionysius, IX. 37.

would never have listened to this: and the penalty was doubtless nothing less than outlawry. Genucius had offered sacrifice before the whole people in the forum[170], and called down curses upon his head if anything upon earth should deter him from following up his accusation: the veto could not stop him, if two of his collegues were of the same mind with him. The carrying the law into effect would manifestly have got over every difficulty: but it was a point of honour with the patricians to maintain their usurpation at whatsoever cost. The younger houses, since their reconciliation with the elder, had gone far beyond them in animosity against the commonalty: in this light we find them from the present time till the decemvirate, and moreover predominating in their order: to them the accused applied for help, and found it[71]. At a secret meeting it was settled to take a step, which, like a punishment inflicted by a secret tribunal, should spread alarm and horrour, while it put an end to the accusation.

Early on the morning of the day fixt for the trial the plebeians were standing in the forum, mixt up with a number of patricians and their clients. They waited for the accuser, surprised, impatient, after a time uneasy at his not coming. At length his friends, who according to custom had assembled before his house to escort him down to the forum, brought the horrible tidings that he was lying dead in his bed. He had been murdered[72]. On this point Livy, whose prejudices certainly did not

[170] Without doubt *posito foculo*, which ceremony was practist even so late as against M. Crassus.

[71] Livy, II. 54: Circumeunt sordidati non plebem magis quam *juniores patrum*. No one assuredly will believe that they neglected the elders. The greater hostility of the *minores* will appear repeatedly.

[72] Not many years after this the oligarchal party at Athens, finding Ephialtes troublesome, got rid of him by a similar crime. Aristotle, quoted by Plutarch. Pericl. c. x. Diodorus, XI. 77.

incline him to suspect the patricians of crimes unjustly, must have found the annals all agreed in their testimony: else he would not have talkt of the insolence and exultation to which the patricians abandoned themselves, even those who were strangers to the act laying claim to a partnership in the guilt[473]. The plebeians were struck with a panic. Being unarmed, and expecting that at the word of command a thousand knives would be bared, they fled, many of them out of the gates, others to their quarters in the city to arm in defense of their lives. A promiscuous massacre however was deemed too hazardous, or too atrocious. But the consuls immediately ordered a general levy, by which they designed to get all their adversaries into their power, to put the most obnoxious of them to death, and to effect a revolution. This would have been their ruin: for mutiny would have been thought rightful against the murderers of an inviolable tribune. But the levy might have been completed, if they had resisted the temptation to insult a single individual; for the tribunes were meanspiritedly silent, when the countrymen who were seized by the lictors, called upon them for aid.

Volero Publilius had served with distinction as a first centurion. He was called out to enlist as a common soldier. As nobody could charge him with any fault, he refused; but said he was ready to serve in the same post

[473] II. 54. Nec patres satis moderate ferre laetitiam: adeoque neminem noxae poenitebat, ut etiam insontes fecisse videri vellent.—55: Pessimi exempli victoria. Dionysius too, in X. 38, acknowledges the murder: *Γενύκιον—ἐπεὶ φανερῶς οὐχ οἷοί τ' ἦσαν ἀνελεῖν—ἀφανῶς ἀνήρπασαν*: although in the course of his narrative, in IX. 38, he had spoken as if some wonderful dispensation of providence had interposed; and even asserts that there was no mark of a violent death. The first person who wrote this was thinking of the death of Scipio; as the vain folly with which C. Octavius and Lentulus Spinther tried after Caesar's death to get themselves reckoned among the conspirators (Plutarch, Caes. c. 67), may perhaps have been floating before Livy's mind.

as before. This was declared to be contumacy; and the lictors were ordered to make an example of him, and scourge him in the presence of the tribunes. They seized hold on his toga to drag him along; but Volero, being strong and active, dasht them away from him, and escaped into the midst of a thick crowd. An insurrection had now broken out. The people compared their own strength with that of the lictors, who were overpowered and maltreated in endeavouring to disperse the assemblages. Their lords fled from the tribunal to the neighbouring curia. The levy was abandoned; and thus quiet was restored. As the multitude, though incenst even to madness, allowed its good genius to arrest it, before it crost the line beyond which reconciliation is hopeless, and immediately returned to lawful obedience, it became a pious belief in after-ages that the internal commotions in the good old times never went beyond the bounds of decency, never so far as bloodshed. Not only were the murder of Genucius, and the outrageous acts of Caeso Quinctius overlookt: but the tribunes, and the people which allowed itself to be guided by them, were robbed of the esteem that was their due, while it was bestowed upon tyrants who shrank neither from murder nor from perjury.

For the following year, 282, Publilius was chosen tribune of the plebs. He scorned to avenge his personal quarrel by impeaching the consuls. The exertions requisite for such a purpose might secure lasting advantages: with this object he proposed that the tribunes should in future be appointed in the comitia of the tribes[474]. On this matter the commonalty beyond doubt were exclusively entitled to decide; more especially now that the confirmation of the curies had been done away. To dispute the point was quite scandalous in men who had

[474] With regard to the erroneous notion that they had previously been elected by the curies, not by the centuries, see Vol. I. pp. 619-20. That they were no longer confirmed by the curies has been stated in p. 190.

usurpt the power of bestowing the consulship: and it was absolutely necessary to get rid of the influence which the first estate had hitherto exercised in these elections by means of the clients; since two of the college, who can only have been chosen by such votes, went so far as openly to oppose this measure[475].

This opposition was not indeed sufficient to prevent Publilius from bringing it to the vote: for the majority in the college was with him[76]; and everybody foresaw that it would be adopted unanimously by the tribes. The senate and curies might have taken exception to their resolution, and have refused to acknowledge the tribunes appointed according to the new system. This would have led to negociations, and to a compromise. But the patricians did not choose to take their stand on this ground: they exerted their utmost efforts to hinder the commonalty from coming to a decision. The magistrates, and every senator, if not every patrician, had the right of opposing any motion of the tribunes which concerned the republic at large: and this is the reason why the tribunes in speaking faced the comitium, where the patricians stood[77]. By such means a debate might now and then be prolonged, without any malicious trick or intentional delay, till sunset: this hour put a stop to all business for the day; so that the assembly was to be dismist without doing anything. Often plans were laid for frustrating a measure in this way; and if there was ground for expecting that the tribune meant to close the discussion betimes, his opponents were prepared for using violence. They came from their own place of meeting, the comitium, and spread over the forum which was allotted to the plebeians; and where the clients were already

[475] Dionysius, IX. 41.

[76] Two of them signed his proposition, whereby he *ἐλαττόνων ὄντων τῶν μὴ ταῦτα βουλομένων περιῆν*: Dionysius, IX. 41.

[77] Which practice was first changed by C. Gracchus: Plutarch, Gracch. c. 5. See Vol. I. note 990.

standing amongst them. Before the votes were taken, the ground was to be cleared of all who did not belong to the commonalty, in order that each tribe might collect within the space set out by ropes for it. But, when all such persons as had no business there were desired to withdraw, whereby the patricians were only required to walk over to the other side of the rostra, they refused to move; and the attempt to drive them away by force caused a tumult, which put an end to all legal proceedings for the day. Sometimes probably they carried off the ballots, and so made it impossible to vote[478].

It might be supposed that the tribunes would at least have resumed the proceeding thus interrupted, on the next comitial day: and more than half the year consisted of such[79]: often several followed one upon the other; and after a few stormy ones, as the leaders of the commonalty were not wanting in perseverance, their object would have been gained, or a civil war would have broken out. As the latter did not take place, one asks oneself why all this disturbance was made?

But the days on which the plebs, and those on which the populus assembled, were distinct, like their places of meeting, their games, and everything else. Those of the plebs were the nundines, on which the country-people came in to market: on these days they appeared to plead their causes with members of their own order, and held public debates on such matters as they were prescriptively entitled, or invited by the senate to

[478] Such are the scenes described by Livy, II. 56, III. 11. He takes *discedere* in the sense of dividing to vote, and thus applies the words, *tribuni populum discedere jubebant*, to the commonalty: for which reason speaking in the name of Appius, in II. 56, he even denies their having any authority over their own estate, because they made use of the courteous expressions, *si vobis videtur, discedite.* Those words however are to be understood literally of the populus; and *discedere* means to go away.

[79] According to Manutius there were 184.

discuss[480]. This was settled in their original constitution by king Servius: and hence funeral sacrifices were offered to his shade on those days in after ages[81]. On the other hand it was unlawful to bring any measure before the populus, or to hold its comitia, on the nundines[82]: so that they were *feriae* and *nefasti* for the burgesses, days of business for the commonalty; and these alone were so, not those on which the populus met. This distinction was done away by the Hortensian law,—the very same which gave the force of laws to the decrees of the people,—and for this very reason. By that law the nundines became *dies fasti*[83]; and now was introduced the

[480] Dionysius, VII. 58: Ἐν ταύταις (ταῖς ἀγόραις, δι' ἡμέραν ἐννάτην) συνιόντες ἐκ τῶν ἀγρῶν οἱ δημοτικοὶ εἰς τὴν πόλιν τάς τε ἀμείψεις ἐποιοῦντο τῶν ὠνίων, καὶ τὰς δίκας παρ' ἀλλήλων ἐλάμβανον, τά τε κοινὰ, ὅσων ἦσαν κύριοι κατὰ τοὺς νόμους, καὶ ὅσα ἡ βουλὴ ἐπιτρέψειεν αὐτοῖς, ψῆφον ἀναλαμβάνοντες ἐπεκύρουν. The words, ὅσα ἡ βουλὴ ἐπιτρέψειεν, refer to a later time, that after the decemvirate, when the consuls used to be charged to arrange with the tribunes that they should bring questions before the commonalty for its decision. Macrobius, Saturn. I. 16, after Rutilius: Ut nono die—ad mercatum legesque accipiendas Romam venirent, et ut scita atque consulta frequentiore populo referrentur, quae trinundino die proposita—facile noscebantur.

[81] Macrobius in the same place, after Geminus and Varro: he quotes Cassius (Hemina) as an authority for the institution of the nundines by Servius. See Vol. I. p. 371.

[82] Macrobius, a little before: Julius Caesar, XVI. auspiciorum libro negat nundinis concionem advocari posse, id est, cum populo agi; ideoque nundinis Romanorum haberi comitia non posse. One sees that this Caesar was not the dictator, but an antiquary, who lived in a past world more than in his own time. Pliny, XVIII. 3: Comitia nundinis haberi non licebat: the next clause, *ne plebs rustica avocaretur*, was prompted by his ignorance of the state of things. Festus: Nundinas feriarum diem esse voluerunt antiqui, —eumque nefastum, ne, si liceret cum populo agi, interpellarentur nundinatores. The patricians likewise had business in the market.

[83] Macrobius, just after: *Lege Hortensia effectum ut fastae essent.* Hence in the calendars now remaining it is true that the *dies fasti* and the nundines often coincide.

custom of convoking the centuries also for the third nundine to pass laws or elect officers[484]. As this was a matter of daily usage, several archeologers could not persuade themselves that those were in the right who taught, after the old lawbooks, that there was a prohibition against all transactions with the populus on those days. This however only makes it the more certain that the latter drew their information from that source.

Consequently the proceedings of the tribunes were restricted to the nundines, or to one day in eight[85]; and it was necessary that they should be terminated in one day[86]. That is to say, if any circumstance hindered a proposition from coming to a decision, it was lost, like a bill which does not pass through every stage and receive the Royal assent in the same session. As such a bill must again be carried through every step from the beginning the next year, just as if it were brought in for the first time, so the tribunes were compelled to give fresh notice of their proposition, as if it had been a new measure, to be discust on the third nundine[87]. Whether this

[484] It is only "by an anticipation"—as Bentley (on Phalaris) says of Polyaenus, where he calls Lygdamis tyrant of Naxos,—that Livy speaks of the *trinundinum* in giving a detailed account of the appointment of the decemvirs.

[85] Livy's saying that the law, which the patricians endeavoured to prevent, *per omnes comitiales dies ferebatur* (III. 11), is an acknowledgement that it could only be brought forward on stated days of meeting: his confounding them with those of the populus is an errour of no consequence.

[86] Dionysius, IX. 41: Τὰς φυλετικὰς (ψηφηφορίας ἔδει)—ἐν ἡμέρᾳ μίᾳ τελεσθείσας ὑπὸ τῶν φυλετῶν τέλος ἔχειν.

[87] Dionysius, IX. 41. The first day on which the proposition of Publilius was brought forward, was spent in violent and indecisive debates: προθέντων δὲ πάλιν τῶν δημάρχων εἰς τρίτην ἀγορὰν τὴν περὶ τοῦ νόμου διάγνωσιν, the result was no better. But we must distinguish the meetings in which measures were put to the vote, from those in which a proposition was merely advocated and debated, as was done on the ordinary occasions of resorting to the forum: these

might be done immediately, or whether they had to wait till the next marketday,—whether the third nundine was the first day in the third week, or did not arrive till three weeks were completed,—are points that will hardly be decided. The longer the intervals between such terms, the more efficacious was an interruption which frustrated the renewal of a proposition, toward preventing an ordinance from being enacted. Another interruption was occasioned by the military expeditions: for, while the soldiers were under their standards, few plebeians can have assembled in the forum. On the other hand all the clients staid at home: and with the help of these their patrons must have far outnumbered the members of the second estate who resided in the city.

By hindrances of this sort, the adoption of the measure proposed by Publilius was delayed during a whole year; if at least there is any ground for the statement that its author was reelected to complete his task. There is so much confusion however in the accounts which the

preliminary discussions, which might at times grow very stormy, may be compared to those in the *bureaux* under the French constitution. Such an assembly was a *concio*; he who presided in it was said *concionem habere;* which even Messalla spoke of as distinct from *cum populo agere*, as he did of *concio* from *comitiatus* (I add from *concilium*): Gellius, XIII. 15. When the consul convoked the commonalty, it was to a *concio:* (its *concilium* he could not hold): this was done with the sound of trumpets by the *aeneatores:* the centuries were summoned by horns; and thus the soldiers in the camp were called together by the former, while the latter sounded the alarm: see Scaliger on Festus, *Aenatores.* The trumpeters were the *liticines*, which, as we now know from Cicero de Republica, was the Latin name for the century called σαλπιγκταὶ by Dionysius: their separation from the *cornicines* or βυκανισταὶ was owing to the above distinction. It was at a *concio*, on the day before the one appointed for voting that Laetorius called on the plebeians to attend on the morrow. *Quirites —crastino die adeste—aut moriar, aut perferam legem:* Livy, II. 56. In like manner Dionysius, x. 40, using an expression which can hardly be called incorrect, says that the tribune Icilius τὴν ἐπιοῦσαν ἡμέραν ἀποδείξας τοῖς κατηγόροις τοῦ νόμου, διέλυσε τὴν ἐκκλησίαν.

historians give of these occurrences[488], that the second election of Volero Publilius may have been a reward for the improvement he had introduced, being at the same time prompted by the trust that he would gain still further advantages for his order. In this his second tribunate, in 283, he brought forward fresh measures, along with C. Laetorius. The first, which transferred the election of the ediles also to the tribes, was of no moment to the patricians; since the jurisdiction of the ediles cannot possibly have extended beyond the causes settled at the nundines, in which both parties belonged to the commonalty[89]. The second declared that the plebs, in its peculiar assembly, was entitled to deliberate and to determine on all matters affecting the common weal[90]; that is to say, when they were brought forward by the tribunes, not by a private individual. This infused new life into the republic. The mute centuries, which were only convened to adopt measures, or to reject them, were replaced by the animated meetings of the tribes. It is possible that the consul, before he led the army to vote in the field of Mars, may have summoned a *concio* and have explained his proposition: but assuredly no one could speak on such occasions, unless with his permission: and even if improvements on this point might have been obtained, yet, so long as the hostility between the orders lasted, it would have been in vain to hope for any law by which a grievance of the plebeians should be done away, if it was to be approved beforehand by the

[488] Livy even under the second year speaks only of the law of elections: though, as appears from the latter part of II. 60, he did not entirely overlook the increase in the power of the *comitia tributa*. [89] See note 480.

[90] Zonaras, VII. 17: Ἐξεῖναι τῷ πλήθει καὶ καθ' ἑαυτὸ συνιέναι, καὶ ἄνευ ἐκείνων (τῶν εὐπατριδῶν) βουλεύεσθαι καὶ χρηματίζειν πάνθ' ὅσα ἂν ἐθελήσῃ. Dionysius, IX. 43: Καὶ πάντα τὰ ἄλλα ὅσα ἐν τῷ δήμῳ πράττεσθαί τε καὶ ἐπικυροῦσθαι δεήσει, ὑπὸ τῶν φυλετῶν ἐπιψηφίζεσθαι κατὰ ταὐτό.

majority of a senate still made up wholly of patricians. Nay, though a just and benevolent man, such as were not wanting among the patricians, became consul, he could not even bring forward a proposition to this effect in the senate: since, when the voice of either of the two collegues was in the negative, he carried the day[491]: and the one appointed by the curies represented their passions, still more than their interests.

It is true, the decision to which the commonalty then came, was still nothing more than a kind of resolution, such as is entered into by a public meeting in England, and then presented as a petition to parliament. The assembly of the plebeians did not become a branch of the legislature till the year 298; when the senate acknowledged to the tribune Icilius that it was bound to take such a resolution of the plebs into express consideration. Till then it might be thrown aside unanswered. All however but the most thoughtless must have foreseen that this acknowledgement could not fail to be made sooner or later: and the legal recognition of the tribunes right to speak daily before the whole people, on the general affairs of the state, as they had hitherto done on those of their own order, was under the circumstances of the times far more than granting the freedom of the press is now. That the rulers resisted such a measure, is no ground of complaint against them: but the manner and the fury of their opposition were equally ill-judged and criminal.

The declaration on the part of the plebs indeed, that it possest such a right, was not enough to ensure its exercise. In order that such an exercise should not be treated as an act of insubordination, it was necessary that the resolution should be elevated into a law, like the compact on the Sacred Mount. To this the senate might unquestionably refuse its consent: it had

[491] Vetantis major potestas.

only to consider how much it was likely to effect by resistance: an opposition begun with too much vehemence, and abandoned through compulsion, would have led to a still lower humiliation. That the same party, which fourteen years before had been able to carry everything by intimidation, should not, now that the lesser houses had joined it, have been a match for the commonalty, is extremely remarkable. The reasons of this however seem to lie within reach of conjecture. The Latins being prest by external enemies, were probably unable to send the Roman government any troops: and as the lesser houses had acquired a preponderance within their own order, it was natural that an opposition to the violent party should grow up among the older houses, which held out its hand to the commonalty. Without this division of the aristocracy, the liberties of the commonalty would have been crusht in the germ, or its victory would have been bloody and destructive.

The government was evidently aware of its inability to maintain its legal veto. But, instead of yielding to circumstances, it was infatuated enough to try the most dangerous of all ways of opposing the measure: it again formed the plan of preventing the plebs from passing the resolution. With this view it appointed Appius Claudius consul, or rather, as the tribune in Livy says, executioner of the plebeians[492]. It was most fortunate, above all for the oppressors, that the free choice of the centuries had been able to give him a mild and soberminded collegue in T. Quinctius.

On the eve of the decisive day, Laetorius, weary of

[492] See note 424. The consular year did not coincide even in those times with that of the tribunes: every tribunate was divided between two consulates; and thus Laetorius had already given notice of his proposition before the consuls for 283 were appointed: this, as has been remarkt above, was the last act of the outgoing ones. At what time the tribunes, before the decemvirate, entered upon their office, cannot be made out.

the discussion, dismist the commonalty with these words: *I have no skill in prating; but tomorrow I will carry the ordinance, or die here before your eyes.* Early in the morning the estates assembled as for a battle. When the matter had again been debated, and Laetorius was about to put it to the vote, one of those scenes took place, of which a general description has been given above. The patricians, in great numbers, and attended by a vast multitude of their clients, had formed into thick knots, and scattered themselves about the forum among the plebeians. They laught at the request that they would withdraw, and fell upon the messengers who were sent to carry off the refractory by force. Appius exclaimed indignantly against the audacity of laying hands upon those over whom the tribunes had no controll. He sent his lictors to seize Laetorius, who on his side despacht his messengers to arrest the consul. The plebeians rusht forward to defend their tribune: the rods were wrested from the lictors and broken to pieces: the patricians fled: Appius was led by the consulars[493] in spite of himself to the senate house. T. Quinctius conjured the plebeians to preserve moderation in their victory. They did so: but they marcht up to the Capitol and occupied it with armed men[94].

It cannot be questioned that Laetorius fulfilled his vow, and that the resolution of the plebs was past before sunset. It is excusable in Dionysius, that, having found an express statement that the populus had approved of the senate's confirmatory decree, and regarding a double decision of the people as an utter absurdity, he persuaded himself that Quinctius had succeeded in

[493] Such is Livy's account in Dionysius, IX. 48, the πρεσβύτατοι ἐκ τοῦ συνεδρίου interpose: the two accounts taken together point to the *decem primi*, and shew, as is remarkably evident in 293, that the older houses were much the most pacifically disposed.

[94] Dionysius, IX. 48.

inducing the tribunes to leave the matter to be settled by the senate[495]. For this is the unhappy circle into which he can never step without seeing every statement in a wrong light. In the very same manner he conceives that the doubling the number of the tribunes was ordained by the senate at the request of Virginius, and then enacted by the people[96]. On one occasion alone, that of the Terentilian law, he is compelled, by the perfect distinctness of the account which he found, to mention the tribunician resolution, which was followed by an ordinance of the senate, and ratified by the populus[97].

What completed his confusion, was, that the statements about the order in which the senate and people performed their parts in enacting a law, sounded in his ears utterly irreconcilable. The right view on this matter is, that so long as there was nothing beyond the senate and populus, the latter was not entitled any more than a Greek *ἐκκλησία*, in a state which had not reacht the highest pitch of democracy, to decide on any measures except those brought forward by the senate: whereas the plebs commenced its discussions independently within its own body; though till the time of the Hortensian law its resolutions had not the force of laws without the assent of the patricians. Subsequently however it became the practice in sundry cases for the plebs also to discuss measures proposed to it by the senate; first when they were invited to confirm resolutions of the curies, and afterward in consequence of their having occupied the place of the ancient populus. How these changes were brought about in course of time will be explained hereafter[98]: but this is the place for remarking that it was

495 IX. 49. 96 X. 30.

97 X. 48: Τὸ περὶ (read παρὰ) τῶν δημάρχων δόγμα προεβούλευσαν. Then comes a decree of the senate, and the confirmation of the populus: c. 52.

98 As the place for treating of this subject is still a long way off, I will remark here beforehand that in the latter centuries of the

not till after Dionysius had written his second book, that he conceived the correct view, that the curies could never vote except on ordinances of the senate; which view he then indeed expresses with the utmost distinctness[499]. At the beginning of his work he had entertained the very opposite opinion, that the decrees of the people were primarily enacted by the curies, and then brought before the senate to be ratified; and that the inverse course was an innovation[500]. He imagined that the Roman constitution began with a monarchal democracy, that the curies were a democratical body, and that the aristocracy was introduced by the centuries;—labouring under an errour closely akin to that which regards the constitution of the Italian towns in the eleventh century as purely democratical, because there is no mention of anything but the houses, and these are to all appearance equal:—he transfers to the kings and the curies what is true of the tribunes and the plebs. When he had subsequently acquired the abovementioned view, he persuaded himself that the real ground of the offense which the tribunes gave by their propositions, was their presuming to bring them before the people without the previous deliberation of the senate; and that often there was nothing objectionable in the measure itself, only it was necessary to insist on the observance of the legal forms: and this he thought the firmness of the fathers had enforced on Laetorius and Virginius.

republic enactments touching the constitution were entirely independent of the senate: on the other hand no decree of the plebs affecting the administration could be promulgated without a previous ordinance of the senate. See Livy, XXXVIII. 36.

499 See note 393.

500 Dionysius, II. 14. Ὅ τι ταῖς πλείοσι δόξειε φράτραις (with regard to elections, laws, wars), τοῦτο ἐπὶ τὴν βουλὴν ἀνεφέρετο. ἐφ' ἡμῶν δὲ μετάκειται τὸ ἔθος. οὐ γὰρ ἡ βουλὴ διαγινώσκει τὰ ψηφισθέντα ὑπὸ τοῦ δήμου, τῶν δ' ὑπὸ τῆς βουλῆς γνωσθέντων ὁ δῆμός ἐστι κύριος.

Being entangled in these errours, he could not suppose that the people to whom the ordinance of the senate was sent to be ratified, as had been the case in the usurpt elections since 269, was any other than the assembly of the centuries: in fact he makes express mention of these as having adopted the Icilian law. He himself however furnishes us with the means of refuting his mistake; inasmuch as he adds that these comitia were held before the pontiffs, augurs, and two flamens[501]. Now the presence of these priests at the meeting of the curies was essential and indispensable[2]; but neither the pontiffs nor the flamens had anything to do with the centuries. The assent of the curies was more especially necessary to this law, since it is numbered among the solemn compacts between the estates. Accordingly they must have concurred to confirm the resolution of the centuries; as it was necessary that they should do, whenever the centuries past a law, until Publilius in his dictatorship set this rule aside. After this however the interference of the centuries would have been a most unnecessary accumulation of formalities; since the *suffragia* voted in the curies, the plebeian knights and the rest of the commonalty in the tribes. Whatever had been decreed by the populus was law[3]: and there was nothing about which the ruling estate at that time can have been less anxious, than maintaining the importance of the comitia of the centuries.

It might be argued with a greater degree of speciousness

[501] Dionysius, x. 32. *Ἱεροφαντῶν τε παρόντων, καὶ οἰωνοσκόπων, καὶ ἱεροποιῶν δυοῖν* (See Vol. I. p. 303), *καὶ ποιησαμένων τὰς νομίμους εὐχάς τε καὶ ἀράς.*

[2] The council of the curies was held *τῶν ἱερῶν* (read *ἱεροφαντῶν*) *καὶ οἰωνοσκόπων ἐπιθεσπισάντων*: Dionysius, ix. 41. Gellius, v. 19: Comitia arbitris pontificibus praebentur quae curiata appellantur. Those of which he is speaking were mere shadows, but still images of the ancient ones.

[3] Lex est quod populus supremum jusserit.

that, with the exception of a peculiar case like the Icilian law, Dionysius only inverts the conception of the true relation between the senate and the people; and that the giving assent to a resolution of the people which required it rested with the senate alone; that the senate alone was the *patres*, whose veto Publilius and the Maenian law converted into an empty shadow. This was clearly Livy's notion, when he began to write his history[504], being then a total stranger to the language of the ancient constitutional law. Though at first however he was influenced by the daily usage of his own age, when the term *patres* was never employed for the patricians, of whose existence there was little to remind him, but only for the senate; yet afterward, as in the progress of his work he was forced to keep the annalists before him, and grew familiar with them, he adopted their phraseology, using the word *patres* unequivocally for the patrician estate[5]. Nay, he makes an express distinction between the *patres* and the senate, which sends an ordinance down to them[6]: and in another place instead of

[504] In the account of Numa's election (I. 17), there are a hundred *patres*, who resolve *ut, cum populus regem jussisset, id sic ratum esset si patres auctores fierent. Hodieque—usurpatur idem jus, vi adempta:—in incertum comitiorum eventum patres auctores fiunt.* On the other hand there seems to be no reason for supposing that Cicero did not mean the patricians by the *patres reprehensores comitiorum* Planc. 3 (8), *auctores,* De re p. II. 32; though in the Laws he uses that term for the senate. In the latter passage on the contrary this right of confirmation is mentioned beside the authority of the senate as decisive *ad obtinendam potentiam nobilium.*

[5] I will only cite a few conclusive instances. Uno animo *patres ac plebes*—Volscos et Aequos—pugna vicere: II. 42. Omnium illo die, *qua patrum qua plebis,* eximia virtus fuit: II. 45. Connubium *patrum et plebis:* IV. 1. Ut duoviros aediles *e patribus* dictator populum rogaret: VI. 42.

[6] IV. 8: *Mentio illata ab senatu est:—patres—rem—laeti accepere—et tribuni—haud sane tetendere.* All the commentators pass over this passage, except Pighius and Drakenborch, who get rid of

patres he calls them the *populus*[507]. The same thing is implied in the statement of Dionysius that Numa's election was confirmed by the patricians[8]: for here again he manifestly takes the curies for the plebs, and looks on that election as a resolution of the plebeians. I have already remarkt that the assent of the curies in most instances must in fact have been a mere formality, so long as the whole senate was made up of their representatives. This itself however would prevent its being neglected, except on very pressing emergencies, such especially as those that called for the appointment of a dictator. At other times the old principle of the constitution would be observed, that matters concerning legislation, elections, peace and war, were to be decided by the assembly of the populus. In aftertimes, when the senate became a mixt body, this was altered. That vital instinct which silently adapts constitutions to the exigencies of self-preservation, increast the influence of the senate on the resolutions of the plebs: and the efforts of the tribunes to make the senators swear to such as they could not but disapprove, are a recognition of the right of the *patres conscripti* to interpose their veto, in the room of the *patres* of old times. The ordinance by which the laws of M. Drusus were rescinded, rested on the same principle.

what they regard as a contradiction by rash alterations of the text. Livy is speaking of an ordinance of the senate and the curies, which the commonalty adopts.

[507] IV. 51 : *A plebe, consensu populi, consulibus negotium mandatur.* In Ampelius, c. 48, the term *patres* is in like manner used for the populus. *Comitia dicuntur—quod patres et classes ad suffragia vocantur, creandorum magistratuum vel sacerdotum causa.* Soon after he says, *si translatitium sit et solitum* (a matter of form) *de quo populus, curiatis transigitur; si amplius, tributis.* This and the next two chapters are taken from a book written while Rome was yet under a consular government, and Massilia was free with its peculiar aristocratical constitution.

[8] II. 60 : Τῶν πατρικίων ἐπικυρωσάντων τὰ δόξαντα τῷ πλήθει.

On the present occasion likewise the senate decided. The precipice lay before them; and even the most headstrong were dismayed: the proposition was silently adopted as a law[509]. The inconsiderate may have flattered themselves that under favorable circumstances this concession too might be resumed: the farsighted discerned that more had been sacrificed than on the Sacred Mount[10], and that the consequence and fruit of this measure, the admission of the commonalty to a full share in the legislative power, could no longer be averted. The state of things thus introduced could not be lasting: tranquillity lay far off; but life and motion were awakened. The men by whose act not their own order merely, but the whole republic, was thus benefited, are not mentioned any further. No office was attainable by them, through which their names might have appeared in history.

Appius rejected the peace. Full of the deepest scorn for those who had called upon him to defy hatred in behalf of their order, and then had been dastardly enough to abandon him, he burnt with a desire to avenge himself on the despised authors of his shame. If he could but effect this, he was ready to perish, even in an insurrection: his life had been disgraced; and the fools who tried to comfort him only embittered his indignation.

Urgent demands must have been sent at this time by the allies for aid against the Volscians and Aequians: for, unless the faith of Rome had been plighted, the tribunes would never have allowed Appius to raise and command an army: nobody could doubt that he would give vent to his fury. Moreover he had been forced upon them by the curies; and the plebeians in the centuries had refused to recognize him[11]. He however cared

509 Lex silentio perfertur: Livy, II. 57.

10 Graviores accipi leges quam in sacro monte acceptae sint; Livy, II. 57.

11 See note 426.

not about checking the progressive advance of the enemy; he cared not for a triumph. A horrible struggle took place. The consul's mind was wholly set upon devising how he might drive the infantry to despair by intolerable commands and hardships capriciously imposed: the only thought of the soldiers was, to make him feel that all his tyranny could not bend them, that, though he might kill and torture them, he was still their scorn.

Accordingly, when the armies were about to engage, the troops readily gave credit to a rumour that they were betrayed, and that Appius, acting in concert with the enemy, had stationed his cohorts so that not a man should escape[512]. The ranks broke up: all fled to the camp; to which the Volscians pursued them, but without attacking the intrenchments; so that there was leisure for summoning the soldiers to an assembly. To this they were to come unarmed: and they imagined that it was designed to surround them with armed troops, as Tullus Hostilius was related to have surrounded the Albans[13], but for a far bloodier vengeance. For such a purpose Appius could reckon on the patrician knights, and on the allies, who assuredly were always ready, and indeed maliciously glad, to strengthen the hands of the government. Even a madman without this force would never have ventured to persecute the legionaries as he did: they were not martyrs, to let themselves be dragged unresistingly to the slaughterhouse for their oath's sake. Accordingly they refused to lay aside their arms: the officers knew that the first word of offense from the mouth of the tyrant would turn those arms against him; and at length they prevailed on him to dissolve the

[512] For instances of such treachery see above, p. 203, and the legend of L. Sicinius lower down, in the text to note 768. It makes no difference whether explanations of the events recorded, such as are given in the text here, and a little further on, are devised by an ancient narrator or by a modern one.

[13] As Scipio the Great too did after the insurrection at Sucro.

assembly. Soon after he issued orders to break up at dawn for a retreat. When, however, instead of its commencing in silence, the trumpets sounded, a new suspicion arose, that this was a signal to the Volscians to occupy the road and fall upon the column during its march; and as the rearguard found itself actually attackt, a panic seized the troops. They flung away their arms and standards; the fugitives trod those in advance of them underfoot; nor did those who escaped from their pursuers rally till they reacht the Roman territory. Here the consul held a court: the execution of its sentence became practicable through the abovementioned forein aid, the unarmed state of the culprits, and doubtless also from their consciousness of having committed treason against the majesty of the republic. Such of the centurions and their substitutes as had quitted their banners, and every tenth common soldier were beheaded.

What Appius must have foreseen, while he was reveling in this spectacle, took place. When his year was over, in 284, the tribunes impeacht him capitally before the commonalty. In vain had the patricians raised L. Valerius, one of the judges of Cassius, to the consulship: he made no attempt in favour of the criminal. After such conduct no humiliation could have gained his pardon; and the pride of Appius would have loathed a gift so worthless as life granted to him by the plebs. He assailed the tribunes with abuse and scorn: the assembly quailed before him as in the days of his power: his partisans trembled for themselves. His accusers did not wish that the man whom God had markt should fall by the hand of the executioner: they postponed the day of trial, that he might arrange his affairs, and withdraw from his sentence. The Roman religion condemned suicide, and denied the self-murderer an honorable burial, and the rites belonging to it[514]: hence his posterity

[514] Fest. Epit. Carnificis loco, and Scaliger's note. A suicide was regarded as infamous, like an executioner.

were at least unwilling to confess that Appius had voluntarily put an end to himself; which the Greeks, entertaining a different opinion, never questioned[515]. If he was not really releast by a providential stroke, it was contrived that his rash act should be kept secret: for his body was buried with the customary honours, and his funeral oration was not interrupted.

In the same year the consul Tib. Aemilius vainly recommended the senate to carry the agrarian law into effect[16]. Equally unavailing were the demands of the tribunes in the next year, 285. A violent outbreak of discontent was prevented by the inroads of the enemy. That feeling however must have reacht the highest pitch of infatuation, if it be true that the plebeians refused to take part in electing the consuls for 286, so that the patricians by means of their clients gave away the seat, the bestowal of which had been left to the centuries. For either this, or that the patricians again usurpt the appointment of the second consul, as well as the first, is the meaning of Livy's statement[17]: which however, it is probable, was merely bottomed on an account, that the consul appointed by the curies again this year received a formal confirmation by the clients, the plebeians refusing to grant it[18]: else the commonalty in its spleen would have punisht itself. A brilliant campaign and the surrender of Antium produced a more conciliatory

515 Dionysius, IX. 54: Zonaras, VII. 17. Livy on the contrary says: *morbo moritur*.

16 Compare Livy, III. 1, with the long-spun account in Dionysius, IX. 51: his statement that the other consul, L. Valerius, interfered, is very questionable.

17 *Per patres clientesque patrum consules creati*: Livy, II. 64. One of them however was T. Quinctius, the popular consul of the year 283: and Dionysius, who never omits occurrences of this sort, though he dresses them up to suit his own views, says nothing about this election.

18 See note 426.

temper. Tib. Aemilius, being again chosen consul for the year 287, repeatedly urged the execution of the Cassian law, and perhaps not without some effect. The colony sent to Antium indeed was no relief to the complaints of the commonalty. On the contrary, they could only be aggravated by a measure which provided for none but the burgesses: for, though the complement of the three hundred houses was no longer full, so that a man should go from each to the colony, according to the original usage, yet assuredly the setlers at Antium consisted of ten men from each cury; nor was anybody sent thither who did not belong to one[519]: the object of this colony too was unquestionably to protect the domain, of which the patricians took possession. Thus in 312, after the founding of the colony at Ardea, the tribunes again call for a partition of lands. But during the five and twenty years between that year and the second consulship of Aemilius no agrarian demands were brought forward[20]; though ever since the death of Cassius they had been renewed year after year, except during the calamitous war with Veii. This, unless the misfortunes, which soon after burst upon the republic, deprived it of the whole district about which the two estates were contending, can only be accounted for by supposing that the present consul obtained, not indeed the honest execution of the law, but at least some kind of tolerable compromise in behalf of the commonalty.

Dion, in treating of this period, abandoned the regular order of the Annals, and combined the internal commotions of several years together; so that, even if his

[519] See p. 48, note 94.

[20] In Livy there is no mention of them throughout this whole period; and though in Dionysius on one occasion, in the year 299 (x. 35), the agrarian law is brought forward along with the propositions about the legal reforms, we may regard this as a mere interpolation, by which he or some annalist before him fancied he was supplying an omission.

account of it had been preserved entire, it would hardly prove that he decidedly conceived the right of appealing to the burgesses against a fine imposed by the consuls to have been establisht at the same time with the Publilian laws[521]. It is clear however that he ascribed this right to the plebeians; and erroneously so. For assuredly they had no indulgence or protection to expect from the assembly of the populus: and the first step to shield them from the abuse of the authority vested in the supreme magistrates must needs have been to fix a limit for all fines; a measure which did not take place until the consulship of Tarpeius and Aternius. For the patricians there had been such a limit ever since the time of Publicola[22]: hence it was on them that the privilege was now conferred of having the same security against unjust mulcts, which both estates had within the city, and which the first no doubt ere this had in the camp, against corporal punishments; a security however which in the case of the plebeians was but ill respected. Dion forgot that, as from the passing of the Hortensian law, when there was no longer a privileged class, the people kept progressively curtailing the power of the government, so the patricians, while they were a separate body, had similar reasons for doing the like, at the same time that they were contending for their privileges with the commonalty. Thus the great council at Basle first with the help of the burgesses set limits to the authority of the little council, and then united with it

[521] Zonaras, VII. 17: Κἂν τις ἐπ' αἰτίᾳ τινι παρὰ τῶν στρατηγῶν προστιμωθῇ, ἔκκλητον ἐπὶ τούτοις τὸν δῆμον δικάζειν ἔταξαν. The increase in the number of the tribunes, spoken of in the same passage, does not seem to refer to the augmentation from five to ten, but to that from two to five, which according to Piso's opinion was the consequence of the Publilian law: see Vol. I. p. 617. It is clear from Zonaras, VII. 15, that Dion conceived the original number of two was not enlarged till some time after.

[22] Two sheep and five oxen: Plutarch, Publicol. c. 11.

against them: and if the rural population had demanded higher rights, all the three bodies would have made common cause against it.

This is the place where Dion should have made mention of a law, brought forward by a tribune, empowering his brother magistrates to impeach anybody before the court of the commonalty, who interrupted them when haranguing it, and to compell him to give such bail for his appearance as they exacted: if he failed to do so, his life and property were forfeit[523]. The punishment enacted by this law was in fact always a fine, the accused not being taken into custody: when the offense however was a grave one, the penalty laid in the indictment, as in the case of Caeso Quinctius, must undoubtedly have been death, since the same was threatened to such as did not give bail.

This law cannot have been earlier than the Publilian, previously to which none could originate with the tribunes. It was requisite to secure their right of discussing all matters in their assembly. It is ascribed to a tribune named Sp. Icilius;[24] which name occurs among those of the first five tribunes elected by the tribes[25]. I have no doubt that this was the same person, and that the law was enacted in the year 284. The ediles of the same year, Sicinius and Brutus, are also recorded[26]. I have already observed repeatedly that such enumerations only occur where some change takes place in an office: this is why we meet with the names of the five tribunes of the year 283; and there was the same inducement to mention the ediles. Their interference in the transaction however is a stupid fiction of some late annalists: indeed the whole story has been corrupted by such. Yet we still find a vestige in it showing that the proposition received the sanction of the curies, whereby it became

[523] Dionysius, VII. 17.

[24] Dionysius, VII. 14.

[25] Livy, II. 58.

[26] Dionysius, VII. 14.

law[527]. The death of Appius had excited terrour; and the moment was a favorable one.

Manifest, however, as is the connexion between this law and the time we are now treating of, it has nevertheless been placed above twenty years too far back, in company with the legend of Coriolanus, in which the author of this law, Icilius, comes forward as edile at his impeachment[28]. I see no reason for rejecting this statement, on the contrary I regard it as a valid ground for confidently dating the condemnation of Coriolanus in the middle of the ninth decad of the third century, and for transferring his story, which, at its insertion in the chronicles, slipt so many years out of its place, to a period when, instead of being irreconcilably at variance with the evidence of facts and with all probability, it harmonizes with the traditional history as completely as a story so fully workt out can possibly do; the historical record having been expunged out of the oldest annals no less entirely than that of the execution of the nine conspirators: although a mention of the affair of Coriolanus seems also to have been preserved in the lawbooks.

I shall relate this legend, so far as its genuine features can be discovered. The rhetorical details, with which it has been workt up and lengthened out with

[527] In the mention of the Vulcanal when the matter is brought before the people: Dionysius, VII. 17: for this place was connected with the Comitium, and the assemblies of the curies; and from it Appius the decemvir addresses them: Dionysius, XI. 39. See Vol. I. notes 1205. 1343.

[28] According to Sylburg's emendation of Dionysius, VII. 26, about which no doubt can be entertained. Along with this Icilius the lawbooks in their notes on this trial probably mentioned L. Brutus and M. Decius, whom Dionysius, VI. 88, to enliven his story of the secession, brings forward on that occasion also. As they were in office two years after, he conceived that they must needs have attracted notice then.

more than usual prolixity, I shall pass over in silence[529]; pointing out such parts however as are connected with the unquestionable facts of history, as well as those which are poetical and cannot have had any real foundation.

[529] By such details the account in Dionysius is insufferably spun out, so as to be the worst part of his whole history ; he has preserved some important features however of the old legend, which are wanting in Livy's concise and admirable representation. Plutarch has transcribed Dionysius, adding all else that he could scrape together. References are needless here, except where any of the accounts contains peculiar touches, which are not additions of later times.

THE LEGEND OF CORIOLANUS.

Cnaeus[530] Marcius was in the camp before Corioli, when the Volscians came from Antium to relieve it. While the two armies were fighting, the garrison made a sally: Marcius attackt them, routed them, rusht through the gates with them, and took the place. The cries of the defenseless captives, and the flames that rose from the town, announced the result to the armies; and the Antiates retreated from the bootless conflict. Thus Rome was indebted for two victories in one day to Coriolanus; which surname was supposed in afterages to have been derived from that conquest. Henceforward he was greatly lookt up to by the senate and burgesses: but his haughty bearing offended the commonalty. On one occasion, when the tribunes prevented the consuls from levying troops, he called his clients together, and invited volunteers to join him. With this body he made an inroad into the territory of the Antiates, carried off much booty, and divided it among his followers. Hence the plebeians

[530] On the difference with regard to his proper name see Duker on Florus, I. 11, and the commentators on the epitome of the second book of Livy. *Caius* in reality rests on the single authority of Dionysius; for Plutarch merely treads in his footsteps: in favour of *Cnaeus*, beside Dion, is the great majority of the manuscripts of Livy: and in fact it is only by an arbitrary act of the editors that it has been expunged from the Latin authors.

dreaded him, and refused him the consulship[531]: this inflamed him with implacable anger.

After this it came to pass that there was a famine in the city: many of the commonalty sold themselves along with their children; others threw themselves into the river; not a few went into forein lands: the patricians did not suffer, and took care to provide for their clients. At length some corn came over the sea from Sicily: part of it had been bought; part was a present from a Greek prince. A debate arose in the senate, whether it should be given to the commonalty gratis, or sold to them. Coriolanus advised that the stores should be kept lockt up, unless they abolisht the tribunate. This got abroad, and the fury of the people was kindled. The offender would have been torn to pieces, but that the tribunes summoned him before the court of the tribes: hereby he was left free under the guard of the laws till the third market-day. He himself breathed defiance and scorn: his kinsmen and gentiles implored indulgence for him. Many hearts were softened; many were toucht by the remembrance of his knightly feats: nine tribes acquitted, twelve condemned him.

Coriolanus now turned his steps toward Antium, the abode of his friend Attius Tullius, the king of the Volscians, to live in exile there as a *municeps*. He promist the Volscians the aid of his arm against Rome; and they granted him the highest civil rights, with a seat in the council of every city[32], and appointed him their general. The first town he marcht against was Circeii: the Tyrrhenians opened their gates to him; the Roman colonists were forced to retire: their place was taken by

[531] Στρατηγῆσαι σπεύδων καὶ μὴ τελεσθείς: Zonaras, VII. 16: Dion, Exc. de sent. p. 147. Plutarch, Coriol. c. 14.

[32] Βουλῆς μετουσίαν ἐν ἁπάσῃ πόλει, καὶ ἀρχὰς ἐξεῖναι πανταχόσε μετιέναι, καὶ τῶν ἄλλων ὁπόσα τιμιώτατα ἦν παρ' ἑαυτοῖς μετέχειν: Dionysius, VIII. 9. See above, p. 58.

Volscians, the old inhabitants remaining uninjured[533]. In the next campaign he attackt the Latin towns between the sea and what was afterward called the Appian way, Satricum, Longula, Polusca, Corioli, Mugilla: every place before which he appeared was overpowered, or surrendered; even Lavinium, the sacred seat of the Latin religious worship. After this he led his army against the towns on the Latin way, along the crossroads which subsequently united it with the Appian way, and which cut through the territory of the Latins[34]: there Corbio, Vitellia, Trebia, Lavici, Pedum fell before his arms[35]: the whole of Latium joined him[36]. Thus the Romans were left without a single ally in the world, and at home were distracted by suspicion and irritation, over and above their old grudges. The patricians reproacht the plebs with having driven Coriolanus to become an enemy to his country; the plebs charged the patricians with abetting his designs and betraying the republic to him. He pitcht his camp where the Marrana crosses the Latin way,

[533] See p. 108, note 224.

[34] This is the simple meaning of *transversi limites* or *tramites* in Livy, II. 39.

[35] On the incompatibility of the accounts given by Dionysius and Livy see p. 95, note 198. In the former the list seems to begin from the Aequian frontier: it proceeds toward Rome in the direction of the Latin way, then turns aside and goes by Bovillae to Lavinium: after which come the towns to the south of the Appian way. I have chosen to follow Livy, in whose account Antium is regarded as the central point: only his words sound as if Satricum and the four following places had lain on the Latin way. It is possible that he himself did not know the situation of these towns, which had long been destroyed: but his earlier predecessors could not mistake on such a point; and as one cannot see what should have induced him to deviate from them, it seems pretty nearly certain that the words, *in Latinam viam transversis tramitibus transgressus*, have been misplaced, and ought to be inserted between *deinceps* and *Corbionem*. At all events one must understand the account as if he had written thus.

[36] Καὶ τοὺς Λατίνους προσειληφότες: Zonaras, VII. 16.

five miles from the Capene gate[537], on the spot where the Horatii fought with the Curiatii, and through which the procession of the Ambarvalia past[38]. Within this ancient inaugurated boundary between Rome and Alba lay the landed property of his order: on the further side of it he had commanded the farms of the plebeians to be burnt down, but had protected those of the patricians. He had not yet cast off his allegiance to the populus.

It was impossible to raise an army against him. The plebeians loudly exclaimed that the purpose of the patricians was to give them up to the enemy: nor did the honest citizens deem themselves safe against the treacherous opening of one of the gates in the wide circuit of the walls[39]. The senate ordained, the curies confirmed his restoration to the rights of a Roman citizen[40]: the assent of the commonalty was not withheld. Severe as the expected retribution might be, the chief part of the multitude might hope to escape it; but even the lowest had reason to dread the fate of a city taken by the sword. Five consulars carried the decree to him. But Coriolanus thought not of himself alone. He demanded that the territory taken from the Volscians should be restored to them, that the colonies settled there should be recalled, and that the whole people should be received

[537] Ad fossas Cluilias quinque ab urbe millia passuum: about four miles and a half from the Porta S. Giovanni.

[38] See Vol. I. p. 348.

[39] The stories of the impatience of the commonalty to get rid of the war by the recall of Coriolanus rest in part on the commonplaces about the insolence and timidity of an ignorant multitude, in part on the confounding of the *πλῆθος* with the *δῆμος*. The *δημοτικοὶ*, who threaten that, if the senate does not recall Coriolanus, they will do so without waiting for a *προβούλευμα* (Dionysius, VIII. 22), are the burgesses, and cannot possibly be the plebeians.

[40] Ἡ *γερουσία κάθοδον τῷ Κοριολάνῳ ἐψηφίσατο*: Zonaras, VII. 16: the confirmation of the curies, which was quite indispensable for the reestablishment of civic rights, is merely past over.

as allies and isopolites[541]. He allowed the Romans the two terms of thirty and three days[42], fixt by the fecial law, to make up their minds. Should these pass away, and his demands not be acceded to, it would rest with him to determine what course to pursue; as, when a state had sent fecials, it belonged to the elders in the senate to take counsel whether they should avenge the wrong forthwith, or should continue to exercise forbearance[43].

These terms, as the sequel will shew, are nothing else than the very sacrifice by which Rome in the year 295 had the wisdom to purchase peace with the Volscians. It is impossible to refrain from indignation against Dionysius and similar rhetoricians, who, though persuaded that Rome made no attempt to avert these conditions except by humiliating supplications, look on her obstinacy in refusing to give up her conquests as a sign of magnanimity; which no sound judgement would find in it, even if it had been coupled with a resolution to perish rather than do so. Nor could Coriolanus have earned the praise of justice and piety from posterity[44], had he allowed himself to be swayed into betraying the people that had received him, while he spared the Romans the fulfilment of a reasonable demand: they would at all events merely have blest the good fortune of the city. But the evil that threatened them was of quite another kind. It was such that the republic might without shame fall at the feet of her incenst son, and implore him not to inflict it upon her. History, whether purposely or by accident, has made no mention of it. The greatest calamity that could befall a free city, next to an enemy's

[541] See note 206.

[42] The first, Dionysius, VIII. 35, the second, VIII. 37.

[43] De istis rebus majores natu domi consulemus.

[44] Ἄδεται καὶ ὑμνεῖται πρὸς ἁπάντων ὡς εὐσεβὴς καὶ δίκαιος ἀνήρ: Dionysius, VIII. 62.

taking it by storm, was the victorious reentry of those who had been banisht by the state, and who claimed their alienated property and vengeance as their rightful due. Of such persons in the present instance there were many, who had been driven by long years of extreme misery into actually becoming banditti, a name that arose out of a similar class of outcasts. The reason why they had been expelled was forgotten: the Ghibelline and the *bianco* stood under the same banners; nor was a runaway debtor or criminal rejected, provided he was able-bodied. That a number of Romans were living in exile at this time, is proved by the enterprise of Appius Herdonius: descendants of the Tarquinian party, profligate patricians and plebeians formed a motley crew. These, his companions in misfortune, Coriolanus demanded should be recalled as well as himself: this is as indubitably certain as if every historian attested it. A terrible demand for all in the city, without distinction of party, who did not wish to see general ruin! His warmest adherents, who, provided the authority of the senate and curies were not impaired, and the liberties of the plebeians were overthrown, would willingly have invested him with kingly power, could not but have trembled to see him come back as the chief of a band who viewed the burgesses and the commonalty with equal contempt; and whom, even if he had been willing to risk his life, he could not have restrained from outrages such as Rome was destined to undergo from the hordes of Marius and Cinna. They however had become his people: how could he sever himself from them?

In the hope of moving his compassion the Ten First of the senate, when thirty days of the respite were over, came before his tribunal. They were dismist with threats in case they returned with any proposals short of unconditional submission. On the following day the flamens, the pontiffs, the augurs, all the other colleges of priests, came in the robes of their office: they too prayed in vain

in the name of all that was sacred both to them and to him. And now, if the third day's sun should set without his having changed his purpose[545], he was to lead his army the next morning across the frontier, which had not yet been overstept, against the helpless and betrayed city.

At this crisis Rome was a second time saved by her women. As the last embassy of the republic, her noblest matrons, led by the aged mother of Coriolanus, Veturia, and by his wife Volumnia, holding her little children by the hand, came to his tent. Their lamentations, his mother's threatened curse bent his mind: he resolved not to return to the home, to which he could not carry back his companions. *Mother*, he said, bursting into tears, *thou hast chosen between Rome and thy son*[46]*: me thou wilt never see again: may they requite thee for this!* When the women had departed, he broke up, and dismist his army. He lived among the Volscians to a great age, and was often heard to say, that none but an old man can feel how wretched it is to live in a forein land[47]. When death had releast him, the matrons wore mourning a whole year for him, as they had done for Brutus and Publicola[48]. Posterity honoured him as an upright and holy patriot[49]; and justly so: he atoned a thousandfold for the sins of his youth.

[545] He dismisses the matrons ἐπεὶ περὶ δύσιν ἡλίου ἦν: Dionysius, VIII. 54.

[46] Σὺ μὲν ἀντ' ἐμοῦ τὴν πατρίδα ἔχε, ὅτι τοῦτ' ἠθέλησας: Zonaras, VII. 16.

[47] Livy, II. 40, after Fabius. Zonaras, VII. 16, after Dion, Exc. de sent. p. 150.

Tu proverai si come sa di sale
Il pane altrui, e com' è duro calle
Lo scender e'l salir per l'altrui scale.

[48] Dionysius, VIII. 62.

[49] See note 544. As even the Guelphs honoured Farinata degli Uberti.

The story that Coriolanus lived and died in quiet among the Volscians, excited no surprise so long as it was the general belief that they were indebted to him for the glorious peace by which Antium was restoied to them, as well as for the conquest of the Latin towns. Nay, if there could be a doubt that the legend also represented the humiliation brought upon Rome by that treaty as the act of her own son, and exalted his virtue by making him keep faith toward the nation that had received him, while he sacrificed himself, this very story would prove it. It was not till very late, after the peace of 295 had fallen into oblivion, that anybody could fancy that Coriolanus had yielded his demands in behalf of the Volscians to the prayers of the matrons: and then it was deemed impossible that he should have continued to live in the midst of his incenst foes. Various accounts were devised of the way in which he perisht[550]. Others were struck with the reflexion that the obedience of the Volscians to a stranger who commanded them to give up the war, was altogether as incredible: and so the fable of the voluntary death of Themistocles was transferred to him[51]; just as we find stories out of Herodotus inserted in the account of the Tarquins.

Cicero, through whom alone we become acquainted with this form of the story, merely says of its hero that he took part in the calamitous Volscian war[52]: this may perhaps have been what he heard at Arpinum. The Roman tradition however regarded that war as one waged under the auspices of Coriolanus himself against the Latins, but with which the Romans were merely menaced, as is shewn by the fecial truces, and which was averted:

[550] Invidia rei oppressum periisse tradunt, alii alio leto: Livy, II. 40.

[51] Cicero Brutus, 10 (42): Conatum iracundiae suae morte sedavit.

[52] Brutus, 10 (42): Bellum Volscorum gravissimum, cui Corioanus interfuit.

it lookt on him and his followers as a power with which the Volscians allied themselves as with a state. Assuredly its view was that he did not go forth alone, but attended by the same bands which had followed him on his unauthorized expedition against Antium, and that these were not inferior in strength to those which accompanied the Fabii. Poetical invention seems to have allowed itself free scope in this story; and so the whole of it must be excluded from history. While the legend of Camillus has only stifled the historical tradition in a few passages, that of Coriolanus has done so in its whole extent; and so completely, that it is difficult to make out the place it belonged to. We are even liable to mistake the discords of the annalists for the notes of the poet. The battle fought by Cn. Marcius before a town, which he takes with his own hand, is an idea belonging to a heroic poem. Whether this poem called the town Corioli, may be questioned: at all events the origin of the name Coriolanus must have been of the same kind as that of similar ones derived from other Latin towns[553]. I have already remarkt that the whole story of the manner in which corn was procured during the famine, and consequently that of the present from the Sicceliot king, may have been borrowed, after the mischievous custom of the annalists, from the year 344[54]. But the proposition of Coriolanus is no invention of theirs: they only wanted to devise a plausible explanation how the senate came to

553 See Vol. I. note 765, p. 556. Of such a kind, it is evident, are the names, *Camerinus*, *Carventanus*, *Collatinus*, *Medullinus*, *Tolerinus*: the same thing is equally certain of *Mugillanus*, *Vibulanus*, *Viscellinus*. Such names, when taken from an independent town, were assumed by its πρόξενος, when from a dependent town, by its *patronus*.

54 See p. 97. Compare Livy, II. 34, and IV. 52. On both occasions the purchasers of corn meet with hostile interruption at Cuma; the Sicceliot princes afford assistance; the immediate pressure is relieved by an importation from Etruria down the Tiber.

have corn. Soon after the famine of 278, the only one that can be meant, the impeachments of powerful delinquents by the tribunes begin: and that of Coriolanus, which was grounded immediately on the mutual rights of the two estates, may have been one of the first. Sp. Icilius may perhaps have appeared there before his tribuneship, as edile. A good number of years may have elapst between the condemnation of Coriolanus and the peace of 295: in which it is extremely dubious whether he actually took any leading part. At least the two enumerations of his pretended conquests are nothing else than two imperfect lists of the towns taken by the Aequians, along with those taken by the Volscians after the fall of Antium and of the fortresses in the Pomptine district. We may conjecture with great confidence, that the vanity of the Romans tried to console itself by representing the recall of the colonists as a concession made to their magnanimous and injured fellowcitizen; and that Coriolanus only attended the Volscian standards as leader of a band of Roman exiles. Since a recollection however, like that which remains of him, cannot rest on a mere fable, we may deem it certain that his generosity resigned the opportunity of taking the city when Latium was almost entirely subdued, and Rome brought to a very low ebb by the pestilence.

THE WARS WITH THE VOLSCIANS AND AEQUIANS, DOWN TO THE PEACE OF 295.

Prior to the unspeakable calamities which befell Rome in these wars, several years had past with great vicissitudes of fortune. The disastrous campaign of 283 must without doubt have added very much to the power of the Volscians. On the other side the Sabines were still carrying on the hostilities, which the Veientines had engaged them to commence. Down to the year 285, the Romans were merely fighting for the defense of remote insulated districts, and of their confederates. But now the Ausonian tribes had spread so far, that the territory of Rome itself was subject to their ravages; the Sabines even crost the Anio, and advanced to the gates of the city. Dissensions had prevented the sending out any legions. They were now raised with the utmost haste[555]; and the plunderers retreated before them. I shall pass over the main part of the occurrences related of these campaigns: for even if they were more attractive, who would give room to stories which may very probably be nothing but the idle inventions of some chronicler! This is not the case however with the account, that the Volscians were overtaken and defeated in the same year,

[555] The correction of a passage so scandalously corrupt as that in Livy, II. 63—*consules, coacti extemplo ab Senatu ad bellum, educta ex urbe juventute,*—is a good office one may take any opportunity of performing. Livy unquestionably wrote: *consules, coacto extemplo Senatu, ad bellum educta ex u. j.*

when they were retiring upon Antium, and that the people of Ceno, a seaport in their territory, went over to the Romans. In the next year, 286, fortune continued to favour Rome; and the Volscians at Antium, after a battle in which they were worsted by the consul T. Quinctius, found themselves so hard prest, that they sent to the Ecetrans and Aequians for succour. At the same time the consul was joined by some cohorts of Hernicans. It was naturally expected that a decisive engagement would soon take place. As the Aequians marcht to Antium, the Latins were no longer able to block the pass over mount Algidus. The enemy surrounded the Roman camp with an army far superior in number: being deceived by a stratagem, which led them to expect a sally, they watcht under arms through the night, while the Romans were strengthening themselves by rest. In the morning the latter boldly began the attack, drove the enemy out of positions almost unapproachable up the rugged side of a hill to the very top. Here the allies betook themselves to flight, and left Antium to its fate. The Volscian colonists there had excited the hatred of the old inhabitants[556]; a great part of whom, though they may previously have received the conquerors without compulsion, from their reluctance to be subject to Rome, had now been irritated by their conduct. The colony capitulated on condition of being allowed to leave the place[57]. The confederates having become masters of the town, not by its voluntary accession, but by its surrender, treated it as a conquest, and to secure their possession planted a colony of a thousand men taken from the three nations[58]. The old Antiates had a part, perhaps the largest part, of their district left to them[59], but must have been

[556] See pp. 46. 109. Antium surrendered voluntarily; which would be inconceivable if it had been wholly a Volscian town.

[57] Dionysius, IX. 58, where they are called an Aequian φρουρά.

[58] See above, p. 42, note 78, and p. 85, note 178.

[59] Dionysius, IX. 59: Κατένεμον τὴν γῆν, μοῖράν τινα ἐξ αὐτῆς

degraded into the condition of a commonalty: they became municipals of the ruling nations. So many places however had revolted or been wrested from Rome, that the next census of 289 contains 26000 heads fewer than that of 280[560].

We read that in the year 287, the same in which the colony was settled at Antium, the Aequians concluded a peace with Rome. But they appear again in the field in the same year, and so are said to have violated their faith[61]. This however is undoubtedly an instance of the confusion perpetually occurring between the two allied nations[62]: the people that made peace were the Ecetrans, who in the year 290 were prevailed upon to take up arms again[63]. Nor is there any mention of hostilities with the Volscians during the three preceding years: the war is carried on by the Aequians alone. The troops who fought with the greatest zeal under their standards,

τοῖς Ἀντιάταις ἀπολειπόμενοι. Livy, III. 1: Adeo pauci nomina dedere, ut ad explendum numerum Volsci adderentur. This passage contains a threefold errour: he takes the native Antiates for Volscians and their condition for that of burgesses in the colony; and he fancies that the reason of their admission was, that the plebeians slighted the offer of going to settle there, which however was never made to them. Such distorted statements only need to be set to rights.

560 104114 (not 214),—see Livy, III. 3,—compared with 130000 as the Vatican manuscript reads, instead of 103000, in Dionysius, IX. 36. The great increase in the latter number beyond that of 261 was owing to the admission of the Hernicans as isopolites.

61 Livy, III. 1. Dionysius, IX. 60. It is a pity that the latter let himself be taken in by the conditions of the treaty, which only come from the brain of an annalist of the wretchedest description.

62 For instance in the account of the peace of 295: Livy, III 24, 25. The charge of perfidy however is a calumny which it was just as much a matter of course to bring against the enemies of Rome, as that of cowardice, which they did not scruple to impute even to the bravest nations.

63 Livy, III. 4: Aequi ab Ecetranis Volscis praesidium petiere.—Hernici—praedicunt Romanis Ecetranos ad Aequos descisse.

were the colonists expelled from Antium: and no doubt many of the Tyrrhenian Antiates accompanied them, to escape from the rule of the opposite faction, who had delivered up their native town to the Romans: these exiles are said to have been very numerous. Allies, who have been sacrificed, are always an object of dislike: the sight of them is a reproach. Hence they must have been deemed a burthen by their nearest kinspeople, the Ecetrans: their true home was among those who had not thrown aside their arms[564].

The Aequians carried theirs into the Latin territory; and in the third campaign, that of 289, their camp is said to have been pitcht on mount Algidus: as it continued to be every year until Rome regained the superiority. That name was given to the high land by which the waters flowing through the country of the Hernicans to the Liris are turned off from Latium; a barren, rugged, extensive hill-country, covered with a black forest of evergreen oaks[65], lying between Tusculum and Velitrae, between Velitrae and the Aequian territory, and between the Latins and Hernicans: who, when that mountain was occupied by the Aequians, were separated; whereas, so long as the Romans and Latins were masters of it, the Aequians and Volscians could not unite their contingents except by a very long circuit. I do not feel called upon to repeat and compare the contradictory narratives of

[564] Livy, III. 4: Magna vis hominum—is miles per bellum Aequicum vel acerrimus fuit. Dionysius, IX. 58. 60: see note 229. When Ecetra goes to war again we meet with them there: Livy, III. 10: Ecetrae Antiates colonos palam concilia facere.

[65] *Nigrae feraci frondis in Algido.* This is the description my friend Bunsen gives of the country at this day: I did not visit it, because, when I was at Rome, it was the seat of the banditti. Here lay the town of Algidus, which Dionysius usually mentions, instead of the country; and which must probably be the town he means when he talks of the town of the Aequians. Its situation is correctly stated in the itineraries.

these wars, since that which looks the most probable may perhaps be nothing more than a judicious modification of the others. It is certain however that while the two armies were encampt in face of each other on mount Algidus, a body of Aequians made an irruption into the Roman territory; where the countrymen, who had no suspicion of any danger, thought themselves fortunate if, by leaving their property behind them, they could escape with their families into the city, or to one of the villages in the district. These places of security were the *pagi*, the establishment of which, as of everything permanently beneficial, was ascribed to king Servius[566]. If a hostile inroad was not altogether unexpected, they served, not only to protect the countrymen, but their movables, like the castles upon the hills in Attica: whether we suppose them to have been places surrounded like these with walls, or merely with a ditch, a mound, and palisades, like a Servian *palanka*. There were persons among the later annalists, whose childish vanity was so much hurt by the story of any misfortune befalling Rome, even in remote antiquity, that, if it was impossible to suppress it, they did not scruple to invent some occurrence to follow it, by which the enemy was to be stript of his whole advantage, and to suffer ample retaliation. These falsehoods, being related in the same tone with the parts that rested on tradition, imposed on the writers who drew up a complete classical history of Rome: this was owing to their want of faith in the merits of the simple old chronicles, and in the existence of any genuine tradition. Among the numerous examples of these delusive phantoms[67], which vanish the moment one is prepared for

[566] Dionysius, IV. 15. He calls such a *pagus* a περιπόλιον: IX. 56.

[67] The victory of T. Quinctius is an instance in point in the very next year: so is the taking of Antium in 295 after its revolt, of which conquest Dionysius gives a circumstantial narrative: but which

them, is the story that Q. Fabius overtook the plunderers, defeated them so completely that very few fugitives escaped, and retook all the booty they had carried off.

Such assuredly was not the closing event of the year 289, the first of that unfortunate period which brought Rome to the brink of destruction. The next year the Ecetrans declared war again[568]. A legion under the consul A. Postumius endeavoured to cover the Roman frontier: a second was led by his collegue Sp. Furius to the assistance of the Hernicans. But he was unable to resist the enemy's very superior forces, and was so closely besieged in his camp, that it was only through messengers from the allied towns that the Romans heard of the extreme danger their army was in. From the beginning of the campaign they had made such preparations as the difficult emergency required. The walls were manned by the civic legion. T. Quinctius was at the head of the veterans, and the other troops that formed the reserve; which he strengthened with some auxiliaries from the Latins and from Antium, though the inhabitants of that town had openly manifested their wish to get rid of the colonists. Meanwhile the consul, who seems to have been wounded in the previous battle, had ordered his brother P. Furius to attack the enemy with fifty centuries from the first three classes, while he himself with the triarians and the light-armed troops guarded the camp. The result of this enterprise was very disastrous. Being lured on by the success of their first charge till their retreat was cut off, the whole thousand were slain along with

Livy (III. 23) rejects because the older annals said nothing about it. Of the same kind in a much later age is the capture of C. Pontius in the year after the disgrace at the Caudine forks, the victory of L. Marcius after the fall of the Scipios: such too in the poetical traditions is the victory of Cincinnatus on mount Algidus, that of Camillus over the Gauls. Even the fiction about Regulus has a similar origin.

[568] See note 563.

their leader[569]. The consul too, with the rest of his army, would have been destroyed or taken prisoner, unless Quinctius had come immediately to his relief. He was successful. Postumius was not equally fortunate[70]. The peasantry fled anew into the city, as those of Attica did in the Peloponnesian war: and it was summer, when the cattle, if they are to thrive, must be driven from the parcht and scantily watered Campagna into the mountains, or else at the utmost can just be kept alive on the dry grass and the water that lies in pools in the marshy country toward the sea. Now, however, they could not even be pastured before the walls, and were attackt with a general murrain; which past from them to the

[569] In most instances I cannot possibly enter into a justification of the narratives which I form out of those of Dionysius and Livy, with the same freedom as they used toward their predecessors: the present is one of the exceptions in which it is worth while to do so. The reader will call to mind that according to the old system there were thirty centuries of triarians, ten from each of the first three classes, those of the hoplites: they were separated from the rest, for the defense of the camp, in case of need: see note 450. Now the total amount of the heavy-armed troops was eighty centuries: so that in each legion the number employed out of the camp was fifty centuries, that is, a thousand men, or, to speak with minute precision, there being one and twenty tribes, 1050. The same fifty centuries formed the two cohorts of the hastates and principes in the flexible legion: hence Dionysius, though by anticipation indeed, talks of two cohorts amounting to a thousand men: IX. 63. One sees clearly that only one legion is here spoken of; and assuredly this was all that a single consul in those days had under him. This modest number (3300 men, including the light-armed troops and the cavalry) did not satisfy the writer from whom Livy took his account: so he made the consul also sally from the camp,—that is to say, with fifty centuries of a second legion.

[70] The lies of Valerius Antias, with regard to the victories by which he represented the Roman generals as more than making amends for their losses, were betrayed, even to Livy's natural good sense, by his ridiculous statements about the numbers of the enemy slain. Every reader who is free from prejudice must perceive that the whole story of those successes is a wretched fiction.

inhabitants and became a pestilence, or perhaps only increast the previous susceptibility to a contagion already widely spread, a susceptibility hightened by distress and despondency.

The Consuls, whose names are affixt to the year 291, entered upon their office on the first of Sextilis. In the month of September, when fevers at Rome are usually the most dangerous, a decided pestilence broke out[571]. The Hernicans made fresh suit for aid: but the Romans could scarcely have defended their own walls. The Volscians and Aequians encampt three miles from the Esquiline gate, on the road to Gabii, amid ruins and traces of the conflagrations kindled in their former invasion, with unburied corpses and heaps of cattle lying around. They found nothing more to destroy. Their not attempting to storm the city was assuredly not owing to any feelings of compassion[72]. They may probably have been afraid of the contagion: or they lookt upon the result as more uncertain than it would have proved; for the pestilence was in every house; and such as had not yet been attackt, or had recovered from it, were called out, without regard to rank or age, to mount guard at the gates or upon the walls. Hence they broke up, to ravage every corner of the Latin territory which could still supply them with booty. They marcht unresisted up the well-cultivated hights about Tusculum, which four centuries after were covered with Roman villas, and over the hill of Frescati itself: thence they descended into the rich low-grounds of Grottaferrata[73]. In order to protect these from devastation, the weak army, which the remaining towns of the Latins and Hernicans had assembled, riskt a battle; which ended in their being defeated with great

[571] Dionysius, IX. 67.

[72] As the prefect Q. Fabius says in Livy, III. 9.

[73] In Tusculanos colles—descendentibus ab Tusculano in Albanam vallem: Livy, III. 7.

slaughter. Our histories are silent on the consequences of this unfortunate day.

On the other hand they concur in representing the campaign of the next year, 292, as a victorious one: nay, they tell us that the consuls triumpht.

This indeed would decide the point, if they had drawn their statement from contemporaneous triumphal fasti. But Cicero speaks of it as notorious that there were fictitious triumphs[574]: how welcome must these have been to the vanity of the silly annalists! Nay, why should not they themselves venture on fabricating one? since after so great a calamity a signal retaliation was required. To have placed this in the year of the pestilence would have been too audacious a forgery even for them: but when it was put off a year they no longer felt a scruple. We however, without denying that circumstances may bring the most unexpected events to pass, must say that here, according to all appearance, we encounter an absolute impossibility. Nor can we get over it even by assuming that the pestilence ceast among the Romans, and transferred its ravages to their enemies; since they are still acting on the offensive in the same manner as before[75]. But if we leave the occurrences of this campaign to themselves, and merely assume what must inevitably have happened, we may account for the cessation of hostilities during the two following years. The spreading

[574] Falsi triumphi: Cicero Brut. 16 (62). We shall soon meet with an instance: see note 579.

[75] The course of this campaign is little else than a repetition of others. The Roman army on its way back from the Hernican territory falls in with the plunderers: compare Livy, III. 5. 8. The mention of the territory of Praeneste, as yet independent of the Aequians, although they were already establisht on mount Algidus, seems to betray that the story is by a recent annalist. That it is a piece of patchwork is also manifest from the statement that Lucretius on his return to Rome engaged in disputes with the tribunes, and then triumpht; in violation of the unalterable rule, that a general who claimed a triumph was not to set foot within the city beforehand.

of the pestilence must have made it a matter of necessity on both sides. It must have been confirmed by a treaty: else assuredly Tusculum could not have ventured to send succour, when the Capitol was in the hands of Appius Herdonius.

We may conjecture therefore, that it was by a perfidious attack that the citadel of Tusculum was seized in the next year, 295, by a body of light-armed troops, who held it for several months against the Tusculans, aided by Roman cohorts. The sides of the hill on which that fortress stood, are steep and very high toward the open country: a narrow path, easily defensible, led up to it from the forum: a plentiful spring of good water supplied the wants of the garrison[576]: but the failure of provisions compelled them to surrender their arms and depart. The consul Q. Fabius laid an ambush on their road homeward, and put them all to the sword: an atrocity which is unaccountable, unless the unfortunate men had also broken their faith, and so been guilty of an inexpiable offense.

In the same year Antium was lost by what is represented as a revolt[77]; so that it might look as if the colony had been driven out by an insurrection of the old inhabitants, who invited their former masters to return. But the amicable relation maintained between this city and Rome from this time forward till after the Gallic invasion is not reconcilable with an event which could not easily have been overlookt: and here the legend of Coriolanus comes in to clear up the difficulty, by stating that he demanded that Rome should recall her colonists from the towns she had conquered, and should give them back to the Volscians,—a demand with regard to which

[576] The very ancient channel by which this water was conducted to the lower city, was discovered in 1817. Beyond a doubt it is the *aqua Crabra*.

[77] Eodem anno descisse Antiates apud plerosque auctores invenio: Livy, III. 23.

I have already remarkt, that it is owing solely to the nature of the story we have received, that we hear nothing of its having been accepted. Probably it referred to Antium alone, and it is through mere accident that we find several places talkt of. If other towns were also ceded at the same time, which had defended themselves with difficulty in the midst of the conquered territory, as Auvergne and Soissons, though surrounded by barbarians, long maintained their allegiance to Rome, their case was a different one, and the demand as to them could not be that they should be given back.

The annalists might indeed regard a pacific cession as such an utter impossibility, that to their minds it was self-evident that Antium must have revolted, because from this time forward it continues independent for near a hundred and twenty years[578]. Others again closed their eyes to this very circumstance, and, assuming the fact of the revolt, invented an expedition of the consul L. Cornelius, who was not employed before Tusculum, making him reconquer the rebellious city, and chastise it according to custom[79]. Others, recollecting that it remained in the enemy's hands, were at least determined not to part with the victory before Antium, though a fruitless one, and transferred it to Q. Fabius[80]. Both these accounts seem equally destitute of historical foundation. On the contrary, we may assume that the peace with the

[578] It is with a view to this assumption, and as preparatory to it, that repeated mention is made of the disaffected state of the Antiates, whom Livy absurdly takes for the colonists, that is, the principes who were recalled to Rome.

[79] This is the account of Dionysius, x. 21: and also of the triumphal Fasti, which with regard to these ages prove nothing; since they were compiled in the time of Augustus out of such notices as were then to be met with: their author was no less liable to err than a historian. Livy expressly tells us that the earlier annalists did not say a word about it: III. 23.

[80] Such was the statement of the annalists whom Livy followed.

Volscians arose without any interruption out of the truce; since we find that in this year its terms had already been fully executed.

For another condition of the treaty ascribed to Coriolanus is, that the Romans were to enter into a league and a municipal relation with the Volscians[581]. Now in the census of 295 we find an increase of the numbers, as has already been noticed[82], from 104114, the numbers of the year 289, to 117319; which increase, immediately after the pestilence and the destructive war, can only be accounted for by supposing that the Roman census had been augmented by the returns of some isopolitan people. This people was the Volscians, those of Ecetra and Antium: for from this time forward Antium was a Volscian colony, but independent, like those of the Samnites. The annalists must also have found a statement of a census of the preceding year with a much lower number. Assuredly it was only an inference of theirs, that the numeration was begun in that year, but not completed[83]: the cause of the difference was, that the amount of the new municipals was now added to the former sum.

Our historians too make mention of this peace; only that, as before, they erroneously refer it to the Aequians[84], who this time also reappear as enemies of Rome the year after. In another passage of Livy, however, we find a trace, though certainly one strangely distorted, that he had read works which stated, as the truth was, with regard to the Antiates and western Volscians, that they had been in alliance with Rome for seventy years, when

[581] Dionysius, VIII. 35: Ἐὰν Ῥωμαῖοι—φιλίαν ποιήσονται εἰς τὸν ἀεὶ χρόνον, καὶ ἰσοπολιτείας μεταδώσουσιν ὡς Λατίνοις.

[82] See p. 69.

[83] Census, res priore anno inchoata, perficitur: Livy, III. 24.

[84] *Aequis pax petentibus data:* Livy, III. 24. More than usual importance is attacht to this peace: *Consulum magna—gloria fuit quod—pacem peperere.* See Dionysius, X. 21, who, following some silly guide, writes that the Aequians submitted to the Roman yoke.

they left her after the Gallic invasion. This he could not but regard as absurd, having had to tell so frequently, and but a few years before, of Volscian wars. Hence he introduces the statement in such a manner, that one cannot well doubt that he understood it of the length of the war[585]. The annalist however cannot possibly have meant anything else than what has just been stated. The mention too of the Antiates and Ecetrans as having taken part in the holidays of the three confederate nations, refers, if there be any foundation for it, to the period of this long alliance, which may have been sealed by such a communion[86].

According to the feelings of the annalists, Rome under all circumstances, was to bear herself haughtily and unbendingly. Hence her having evacuated one of her colonies was a scandal they thought themselves bound to suppress. They did not perceive the wisdom of her resolution to dissolve a league, whose power was far superior to hers, by sacrificing a place, which at all events could not have been maintained much longer, and so to confine the war to the Aequians alone. Nor was this object all she attained. Unexpected advantages accrued to her with regard to her relations to Latium from the misfortunes of the preceding years. After the great Volscian war the Latin state was totally broken up. If there had still been a national assembly, the Ardeates and Aricines would have resorted to this, and not to Rome, for a decision of their claims to the waste territory of Corioli:

[585] *Ad deditionem Volscos septuagesimo demum anno subegit:* VI. 2. Eutropius and Orosius also understood this statement of seventy years of war; which however it is impossible to make out by any calculation: hence critics have resorted to the rashest alterations of the text. But there were exactly seventy years between this peace and the taking of the city; and the Volscians who left Rome in her misfortunes were the very same who became her allies in 295.

[86] Dionysius, IV. 49. Though he carries this back to the time of king Tarquinius, we need not take that into our consideration.

the Latins would have been the natural mediators in the dissensions at Ardea; and this town would not have concluded a separate treaty with the Romans. The larger half of the thirty towns was no doubt in the hands of the conquerors, or lying in ruins. Some of them may have sought safety in a treaty, or even entered into a league against their former confederates, who were unable to afford them protection. Tusculum, Bovillae, Aricia, Lanuvium, Laurentum, Tellena, and probably some others besides, evidently betook themselves to a relation of clientship under the Romans, in lieu of the equality the whole state, of which they were the remaining fragments, had previously stood on: and in truth that equality would now have been unsuitable even to their collective body. Henceforward, when the Latins are mentioned, they appear in a state of dependence on the authority and protection of Rome, till they throw off this dependence after the Gallic invasion: and thus we can understand how the historians could persuade themselves that the condition of Latium was never legitimately any other than this, and that its claim to an equality was an act of insurrection. The power of the Aequians did not last; and when it gave way, many places, which had previously fallen into their hands, were conquered by the Romans, who now fought for themselves alone. Thus the Roman state grew out of the wreck of Latium, until its restored greatness was a second time overthrown for a while on the Allia.

The Aequian dominions comprised mount Algidus[587]; but not the hills to the west of it; since the Romans marcht so often to encounter them on its hights. Velitrae, which lies on its southern foot, was at this time unquestionably in the hands of the Volscians, who must have settled there in great numbers: for in the sequel we find it regarded as altogether a Volscian town. Assuredly there is no ground for doubting that the places

[587] They encampt there ἐν οἰκείᾳ γῇ: Dionysius, x. 21.

enumerated in the twofold list of the pretended conquests of Coriolanus were all actually taken by the Volscians and Aequians, only not in the course of a single campaign. Of the towns there mentioned, which are found among the thirty Latin ones, Lavici belonged to the Aequians in 336, when it was reduced[588]: so did Corbio in 296[89]. Satricum in the later wars after the Gallic invasion is in the hands of the Volscians, and not as a recent conquest[90]. Corioli, after the time of the decemvirs, was lying in ruins; and the neighbouring towns were quarreling about its waste domain[91]. Circeii must have ceast to be a Latin town, as a colony was sent thither in 361[92]. Carventum, the town probably spoken of in a passage of Dionysius, where the text is evidently corrupt[93], was repeatedly defended with success by the Aequians, even so late as about the middle of the fourth century, when their power had already greatly declined[94]. Of the Albian towns named among these conquests, Longula and Polusca are spoken of as belonging to the Antiates[95]. At Bolae, which is said to have been reduced

588 Livy, IV. 45   89 Livy, III. 28. 30.   90 Livy, VI. 8. and foll.

91 Livy, III. 71.   92 Diodorus, XIV. 102.

93 In Dionysius (VIII. 19 and 36) the Κοριολανοὶ appear as the citizens of two different towns taken by Coriolanus, one of which must be lookt for in the neighbourhood of Corbio, the other in that of Satricum, Longula, and Polusca. Now this is exactly the situation of Corioli; so that the mistake must be in the first passage. The change of Κοριολανοὶ into Κορυεντανοὶ is very slight; and the *arx Carventana*, from the manner in which Livy speaks of it, must have been in the same country.

94 Livy, IV. 53. 55.

95 Livy, II. 33. Dionysius, VIII. 85. The latter found these places called Albian, out of which name, in VIII. 36, he has made a distinct people of Albietes. Κετία is probably a mistake in his text: *Mugilla* has been restored in Livy by an excellent conjecture of James Gronovius. In reply to the delusive argument brought forward in defense of the common reading, I will remark that *Novelli*, in Livy, XLI. 5, is the surname of the Gavillii.

to ashes at its capture, the conquerors must have settled a colony: for the Bolans in 339 are called an Aequian people, and appear conjointly with the Aequians immediately after the Gallic invasion[596]. Vitellia[97] fell into the hands of the Romans about the same time with Lavici and Bolae; and they sent colonists thither, who were driven out in 361 by the Aequians[98]. With these examples before us, we may not only regard the statement of the taking of Toleria and Pedum as a piece of historical information, but also that with regard to Bovillae and Lavinium[99]: only Bovillae, which blockt the road from Rome to Aricia, cannot have continued long in the hands of the Volscians; nor can Lavinium have been subject to them at the time when Ardea sought an alliance with Rome. These towns may perhaps have been given back in return for the evacuation of Antium.

To what extent the original authors of those enumerations intended to give a view of the Volscian conquests, it is impossible to conjecture. They evidently assume that part of them had already been achieved: for neither Antium and Velitrae, nor Ferentinum occur in the list; which latter town however the Romans had to retake[600]. If this mountain-fastness was not safe, Signia, which lay at the same distance from the Volscian capital, Ecetra, and which, since the loss of Velitrae and mount Algidus, was cut off from the remaining states of Latium, was assuredly unable to hold out. Its recapture, and the establishment

[596] Livy IV. 49. VI. 2.

[97] This and Trebia (Trevi above Subiaco, which assuredly was a Hernican town: see above, p. 83) are wanting in Dionysius. The latter of them at least lay without the circle, to which the account he selected confines itself.

[98] Livy, V. 29.

[99] Dionysius leaves it undetermined whether Lavinium surrendered or not: he seems to have thought this too hard a fate for the sacred seat of the Latins. Livy, following the uniform tenour of the old annals, positively asserts it.

[600] Livy, IV. 51.

of a Latin colony within its walls, Livy passes over; just as he takes no notice of the same events with regard to Circeii. As it is certain that the colony in the latter town, which we read of in the second Punic war, was a different one from that founded by king Tarquinius, the same thing may be pronounced with equal confidence concerning Signia; and the more so as the original colony there must have been a Roman one; since Signia is not reckoned like Circeii among the Latin towns in the year 261. That the still remoter and still more insulated towns of Cora, Norba, and Setia, must inevitably have undergone the same fate, has been remarkt already[601].

Tibur and Praeneste are never mentioned in the history of these times. It is manifest however that the Aequians could not possibly have been masters of mount Algidus, if these strong towns had been their enemies. When that people, soon after the Gallic invasion, suddenly disappears from the stage, we hear of Praeneste ruling over a population in a state of bondage, and separated from the collective body of the regenerate Latin state: so do we of Tibur at the end of the fourth century, when the Latin state was completely reestablisht. Both these towns a hundred years before must either have been dependent on the Aequians, or in alliance with them. As Lavici belonged to these conquerors, Gabii too must assuredly have been alienated from the Romans. This town must have sunk into insignificance previously to the decision about the fate of Latium after the war of P. Decius; since no notice is taken of it on that occasion. It must evidently have been destroyed in the days of the preponderance of the Aequians, or during the irruption of the Gauls. That its pristine greatness was no fable, was discerned by Dionysius from the ruins of the extensive walls that had surrounded it, as well as of its vast buildings: even at the present day it is attested by

[601] See p. 108.

the walls of the *cella* of Juno. It could never have happened that such a town, unless at one time or other it had been so devastated that it could never recover again, should only be mentioned once after the reign of the last king; namely in the year 371, when the Gabines complain that the Praenestines have been pillaging their territory[602]. This merely shews that it was not quite deserted in those days; as it was in the time of Cicero[3]: perhaps a still smaller proportion of the ancient circuit was inhabited, than at Olbia, Pisa, or Soest.

[602] Livy, VI. 21.

[3] Cicero, pro Planc. 9 (23).

THE AEQUIAN WAR DOWN TO THE DECEMVIRATE.

There was the stronger necessity for trying to dissolve the union between the two Ausonian nations, since the Sabines were continually making inroads into the Roman territory. Nay, the Aequians by themselves were strong enough to bring the Romans to repent that they had deemed a single consular army able to withstand their power. L. Minucius was defeated on the Algidus in 296, and besieged in his camp. From this state he was rescued by aid sent to him from Rome, his collegue being in the field against the Sabines. As the battle however had been lost through his fault, he was forced to resign; and Q. Fabius took the command of the army in his stead.

This colourless outline is the utmost share that history takes in the narrative of this campaign. One annalist indeed ascribes the command of the troops that relieved the army to T. Quinctius[604]: but this assuredly is merely

[604] In Dionysius, x. 23, the *custos urbis*, Q. Fabius, sends the best part of his troops under T. Quinctius. Cincinnatus indeed afterward, in x. 24, takes these troops under his command: this however is merely another attempt to combine two different stories, instead of choosing between them. In the fragment of the Fasti belonging to this period, which was discovered in 1817, we find the usual inversion: Minucius is not consul for the whole year, not however from being forced to resign; but he is *suffectus* in the room of another, whose name is lost.

a transfer of his name to this year from 290. According to the system explained above, the reserve, which must have brought the relief, was headed by a general with consular authority. But it is exceedingly improbable that this command should have been committed to one of the questors of blood, which office T. Quinctius filled at this very time. Either a dictator was actually appointed, or Q. Fabius, who afterward took the command of the army, was also the person who saved it. His office assuredly cannot have been that of warden of the city, if either at the time or subsequently a charge was imposed on him which detained him at a distance from Rome.

If the later annalists had met with nothing beyond this simple record, they would have enlarged it with sundry additions, probably ill-judged ones, of the usual kind. Valerius Antias too and other writers of his class would have supplied us with statements of definite numbers, and with other fictions. But the task of relieving the besieged army had been transferred to a celebrated name by a very highly wrought poetical legend. This was adopted, and no further trouble was taken about the ancient record: so that, being cast aside, it has been preserved in its original simplicity: for those annalists were too parsimonious to throw anything entirely away, that could be turned to the slightest account. The contents of this poem are unquestionably very old; and Livy has preserved it with so fine a feeling for its beauties, that there are only a few unimportant features, which need to be completed or restored, as they may be with indubitable certainty.

The Aequians had concluded peace with Rome. Nevertheless Gracchus Cloelius led them again to mount Algidus, and they renewed their yearly ravages. A Roman embassy came to his camp to complain of this breach of faith: they were received with scorn. The Aequian general bad them not trouble him, but utter their grievances to the oak, under the broad shade of

which his tribunal was erected. The embassadors accepted his insolent speech as an omen. The spirit which animated Jupiter's sacred tree, heard them tell of the outrages of the proud, and the sighs of the opprest.

But the punishment lingered. Minucius was defeated and surrounded. Five horsemen, who made their escape before the lines of the Aequians formed a complete circle round the Roman camp, brought the tidings to Rome. Straightway the patres invested L. Cincinnatus with the dictatorship. The appointment was announced to him by a beadle[605] in the Vatican district[6], where he tilled a hide of four jugers. It was summer; and the man whom his countrymen were raising to kingly power, was driving his plough, with no other garment than an apron.[7] This was the way the peasants used to work in the heat of the sun. The messenger desired him to clothe himself, that he might hear the commands of the senate and burgesses. Racilia, his housewife, brought him his toga. A boat lay ready at the bank. On the other side he was received by his kinsmen, and all his friends among his gentiles, and by his three sons: his favorite son was not among them; he had fled before his trial into misery.

The next morning before daybreak the dictator was in the forum. He appointed L. Tarquitius master of the knights, a man noble, brave, and poor as himself. He ordered that all shops should be shut, that all exemptions from service should be suspended, and that everybody should be enrolled under the banners; and further that all the serviceable men were to stand in readiness at sunset in the field before the city[8], with food for five days,

[605] A *viator:* Pliny, XVIII. 4. In Livy it is a deputation; and much more pompous still in Dionysius.

[6] Pliny, XVIII. 4. According to Livy it was below Trastevere.

[7] A *campestre.*

[8] *Martio in campo* is the common reading in Livy, III. 27: in the Florentine manuscript a leaf is wanting here: a good manuscript,

and each with twelve palisades. While the troops that were to march were resting, after having cut their poles and got ready their arms, they who were to stay at home had to prepare provisions for them. His orders were fulfilled. While they were on their march, the commanders called upon the legions to remember that their countrymen had already been surrounded for three days: and of their own accord the standardbearers and foot-soldiers exhorted each other to redouble their pace. At midnight they had reacht mount Algidus, and were near the enemy's camp, which enclosed that of the Romans in the midst. The dictator made his troops march onward in column[609], till a circle was formed about the Aequians. Then they halted, and began to dig a trench, and to heap up a mound, atop of which the palisades they had brought with them were driven in. When they were setting to work, they raised the Roman battle-cry. This announced to the consul's troops that the wisht-for succour was arrived; and they delayed not to burst forth from their camp. The Aequians fought with them during the whole night, till the first break of dawn[10], when they beheld the intrenchment around them, which by this time was completed and insurmountable: and now Cincinnatus led his cohorts against the camp, while its inner

Leid. 2, omits *Martio;* and very properly so: for as they were going to the Algidus, the place here referred to must be the *Campus Caelimontanus*, the *Campus Minor:* see Scaliger on Catullus, LV.

[609] The *agmen longum* is the march in column, in which, at the age we are speaking of, we must suppose that one century of the first class followed another, each ranged with four men in front and five deep: after them came the centuries of the second class. The line of battle was formed with the utmost simplicity by wheeling round. The *agmen quadratum* was the march in battle-array before the enemy.

[10] *Luce prima.* The *alba* before the morning redness; for which our language has no word. Our northern regions are unacquainted with its beauty; as the south is with the charm of our evening twilight.

circle was stormed by Minucius. In extreme dismay the Aequians implored that he would not utterly destroy them. The dictator commanded that Gracchus Cloelius and his captains should be given up in chains: to the common soldiers he granted their lives. The town of Corbio, with everything found in it, was the price of his mercy. They laid down their arms and weapons before the conqueror. An opening was made according to usage in the line by which they were imprisoned, where two spears were set up, with a third fastened across to the tops of them: here they marcht out. Their camp, their horses and beasts of burthen, all their utensils and baggage, all the property of the men, except the tunic worn by each, remained in the hands of the victors. No share, either in the booty or in the triumph was allowed to Minucius and his troops. But they did not murmur: on the contrary they saluted the dictator, when he returned to Rome, as their patron[611], and gave him a golden crown, a pound in weight[12]. This triumph, which cost no mother a tear, was a day of exultation. Tables spread with provisions were standing before all the houses between the Capene gate and the Forum. The troops, as they marcht in heavily laden with booty, refresht themselves with the food that was offered them: the rejoicing citizens arose from the festive meal, followed the procession to the Capitol, and joined in the jovial songs of the soldiers.

[611] It is a striking coincidence, that the army under M. Minucius salutes the legions of the dictator, Fabius, in the very same way: Livy, xx. 29, 30. Was this story transferred in a very late age from Marcus to his gentile Lucius? or did their being of the same gens revive the recollection of the fact, and occasion its repetition?

[12] A pound of gold is 10000 ases: that is, as the legion in those days consisted of 3000 men, three ases and a triens apiece: a genuine old legendary number, and one day's pay. Dionysius passes over this present, he would have thought his hero imperfect, unless he had abhorred riches; and so he also makes him reject a share of the booty at Corbio.

This legend will not stand the test of historical criticism, any more than those which refer to the time of the kings. But such a test must not be applied to it, any more than to them. The poet, whether he sang his story or told it, had no need to reflect that, if five palisades were a heavy load for a soldier inured to his duties, men called out in a general levy must have been quite crusht by the weight of twelve; that so great a number of them could not be made use of, unless the circle was so large that, if all the soldiers stood in a line, they had a fathom of ground apiece; in which case, to say nothing of the time it would have required before each had finished his piece of wall and ditch, an attack in any quarter from the Aequians, who were far superior to Minucius, would have burst through the whole fortification; or that no scout could have walkt the distance between Rome and mount Algidus, more than twenty miles, betwixt sunset and midnight; yet here it is done by a column of men heavy-armed and heavy-laden. The poet however neither counted their steps nor the hours. Still more might he smile at any one who objected, that the Aequians must have been struck with blindness and deafness, if they allowed the Romans to march round them, and inclose them in a net, without offering any impediment, or ever interrupting them while throwing up their intrenchments. For this was not wrought by human means. God had smitten them, so that they neither saw nor heard, and could not perceive the battle-cry, which pierced to the ears of the army inclosed by their lines. This was the fruit of the scorn which had bidden the opprest seek succour from him. He had strengthened the limbs of the Romans, so that they completed their rampart between midnight and the first break of dawn, after a night-march of more than twenty miles, added to the labours of the foregoing day: and after all, they were still fresh enough to make an irresistible onset on the enemy in his intrenchments,

where he had been remaining at rest till the besieged army attackt him.

Dionysius has allowed himself to strip the tale of these marvellous features, and so gets a story, which at best is not quite impossible, as the skeleton and groundwork of a legend, the composition of which may be fully explained. The Aequian general Cloelius is again surrounded and taken prisoner twenty years after near Ardea; and this story has a much more historical air[613]. It is impossible however that the same person should have experienced this fate twice over; for assuredly nobody, who had been led in triumph in those days, ever escaped the axe. There is a like repetition,—so meagre was the invention of the Roman story-tellers,—in the description of the manner how Cincinnatus learnt his elevation while working in his field in the heat of summer. Dionysius had already given it on his election to the consulship[14], to which it evidently belongs. Even the mission of Q. Fabius with his two collegues had already occurred in 289[15]. The epical mode of preparing the way for the result by the speech of Cloelius in mockery of the gods, for which sin an ignominious death was not too severe a punishment, does honour to the poet. In reality the Aequians did not violate their oaths: they had not concluded any peace. The giving up Corbio was invented, according to all appearances, by the annalists, on the ground that it was taken by the Aequians

613 Livy, IV. 10. An intrenchment newly raised, together however with the fortress of Ardea, makes it impossible for him to retreat. It is executed in a night; Cloelius is given up by his troops, who are allowed to depart on laying down their arms: all the same thing over again.

14 Dionysius, X. 17: it is inconceivable how he could write it twice over: ἔτυχε καὶ τότε: X. 24. Cicero, de Senect. 16 (56), refers this story to the dictatorship of 315: one sees how famous it was, and how, after the manner of legends, it shifted about.

15 Compare Dionysius, IX. 60, with Livy, III. 25.

the next year, and yet is already found among the conquests of Coriolanus.

Out of this whole story therefore nothing remains as an undeniable historical fact, except at the utmost that Cincinnatus as dictator delivered the beleaguered army. This, I say, is all at the utmost. What however if this exploit was achieved by Q. Fabius, and only attributed to Cincinnatus, to conceal the melancholy recollection that his dictatorship procured the expulsion of the accuser of his guilty son? that its real object had been to intimidate the plebeians into relinquishing their project for a reformation of the laws?[616].

That Corbio and Ortona were retaken from the Aequians in 297, and that the former was destroyed, seems to be a well-grounded statement. On the other hand the account in Livy of a glorious campaign of the two consuls on mount Algidus in the year 299 has all the air of having been invented by the annalists. Another narrator, weary of the perpetual conflicts on those hights, transfers the battle to the neighbourhood of Antium, bringing only one consul into the field: and the betrayal of the heroic L. Sicinius, the black crime of the decemvirs, is inserted here by anticipation[17]. There was a lack of military events during the years immediately preceding the decemvirate: the Annals seemed to be defective: why should they not be completed? Probably however nothing of importance was undertaken during

[616] The triumphal Fasti, which place his triumph on the ides of September, are only apparently a weighty authority: if we conceive that the author was imposed upon by the false statements he met with (see note 579), he may have found this date recorded and believed it. On these matters he must either have believed everything, or laught at everything: since he even tells us on what days the first Tarquinius and Servius triumpht.

This is not the only puzzle with regard to the honours of Cincinnatus. In Diodorus, whose fasti are by no means to be neglected he is consul two years after: XII. 3.

[17] Dionysius, X. 43, compared with Livy, III. 31.

this period. At Rome everybody's thoughts were occupied by the Terentilian law: and if there was no imperious necessity for a levy, the tribunes may have stopt it, and persisted in their opposition. That this could be done without danger was at first the consequence of the isopolitan league entered into with the Volscians: in the latter part of this period it arose from a terrible pestilence, which in 301 fell upon the Auruncian nations and the Sabines along with the Romans.

DISASTERS AND EXTRAORDINARY PHENOMENA.

For twenty years before the institution of the decemvirate, Rome was visited by all imaginable scourges, mortalities, earthquakes, calamitous defeats, as though heaven had resolved to exterminate the distracted nation from the face of the earth: and manifold signs, betokening an inward coil and stir of nature, announced that the times were out of joint. A similar combination of all natural horrours with the last extreme of human misery came again upon the city, after the lapse of a thousand years, and left it desolate as a grave, three hundred years after Rome had experienced the first pestilence, the ravages of which can be compared with those of this earlier period.

The first of these epidemic disorders makes its appearance in the year 282. Its peculiar character is not described; only that it attackt every one without distinction of age or sex; that it rolled over the city like a torrent or a lava-stream, and would have swept all before it, had it made a longer stay. This sickness is expressly said to have visited the rest of Italy[618]. The same thing is not stated of the second, which raged nine years after, in 291, though it is impossible to doubt that it was no less widely spread: an account has been preserved of its victims, sufficient to give a notion of its

[618] Dionysius, IX. 42.

ravages, and deserving unqualified credit. It carried off both the consuls, three out of the five tribunes, two of the four augurs, the chief curio, and the fourth part of the senators[619]. Now, though medicine has no resources against the real plague, yet the mortality is always far greater in the lower ranks than the higher[20]: because the former cannot retreat from the contagion; and they perish for want of attendance and nourishment, while a strong constitution will save many who are provided with these appliances. Such a proportion appears on the return of the same sickness ten years after, in 301. Among the dead on this occasion the Annals specially enumerated one of the consuls, and the one elected to supply his place, four out of the ten tribunes, an augur, and one of the three great flamens: many senators, half the free inhabitants, and all the slaves are said to have perisht[21]. As to the nature of the disease here again nothing is stated. When Dionysius paints the misery it brought with it, he is evidently borrowing from Thucydides, or indulging in rhetorical invention. The utmost he can have found on the subject in the Annals is, that the calamity and distress were greatly hightened by the practice of throwing the corpses into the sewers, or directly into the river, when hands and means for burying them failed. Hence I am just as little inclined to copy his description, as to attempt myself, after the model of Thucydides or Boccaccio, to portray the cheerlessness, the

619 IX. 67. Livy, III. 6, 7.

20 In the plague of 1628, 40 members of the great council died at Bern, and 3000 persons on the whole: Meyer, I. p. 532. The great council on an average certainly reckoned 250: the city at that time had not above 12000 souls at the utmost; probably much fewer.

21 Livy, III. 32. Dionysius, X. 53. The fact, that Lucretius did not describe these domestic plagues, even if he had been obliged to draw his materials from the Attic historian, proves how completely the Romans in the time of Caesar were strangers to their own early history.

despair, the giddiness, the superstition, the recklessness, the heartlessness and licentiousness of such a horrible period. This pestilence attackt the neighbouring states, the Volscians, Aequians, and Sabines, with equal fury[622]. We are not to suppose however that its ravages were confined within the horizon which at that time bounded the view of the Roman annalists: they undoubtedly spread over the whole peninsula, and produced or promoted many changes. From its propagation in the inland, and even in the mountainous districts, it may be conjectured to have been of a different kind from the Attic, which broke out only sixteen years later: for this, like the yellow fever, appears not to have moved far from the sea or great rivers. Thus much is certain, that the distress was such, the fields were left uncultivated, which gave rise to a famine the next year[23].

No occasion is stated for the eruption of the pestilence in 301: that of 291 broke out, like the Attic one, when the city was thronged with the peasantry who had taken refuge in it with their property from the enemy. The dejection generally prevalent may have acted as a predisposing cause, as at Cadiz in 1800. The want of fodder and even of water for the cattle driven within the walls, could not fail to breed diseases among them: which rendered the men likewise more susceptible of contagion, and even promoted its development: and the fugitives, who, for want of a hospitable roof, past their nights under porticoes or in open places in the dogdays and September, were liable to the malignant fevers of the season, even within the inclosure of Servius. The same causes operated at Athens. Thucydides however does not trace the disease to them: on the contrary he is persuaded that it came from Ethiopia and Egypt. Thence it was

622 Dionysius, x. 53.

23 Dionysius, x. 54. It was just the same after the plague of 1348: Matteo Villani, I. 4.

brought on board a ship to the Piraeus; where, like the yellow fever, it quickly broke out with violence under the favorable circumstances just mentioned.

The real origin both of these Italian pestilences and of the Attic one was probably connected with the volcanic convulsions that took place about the same time. Contemporary writers deemed it unquestionable that such a connexion existed between the second Attic pestilence and the dreadful earthquakes of the same period*; which however affected Attica but slightly. The cause therefore must lie deeper than that infection of the air and waters, which takes place in an extensive region, shattered by volcanic action, as in Calabria in 1783. I will not indeed venture to assert that extraordinarily violent and farspreading earthquakes and eruptions of lava are always attended with a great mortality: this conjecture may be reserved for the decision of a future age better furnisht with the means of examining it. On the other hand we know that the *black death*, the progenitor of the present Oriental plague, arose in China, in 1347, after terrible earthquakes, and on the soil which they had rent and shattered[624]; at a time when the world had been quite free from this scourge for more than seven hundred years; that is, ever since the extinction of the pestilence which appeared in the reign of Justinian, during a period of incessant terrible earthquakes, selfengendered, like an immediate angel of death[25]. The dreadful mortality too, which prevailed in Italy and Greece about the year of Rome 460, fell out at least very near a time of unusual volcanic convulsions. If we look about for such at the period of the two Roman epidemics, and

* Thucydides, I. 23. III. 87.

[624] Desguignes, Histoire des Huns, v. p. 223, foll.

[25] The village near Pelusium where it first appeared was well known; as in India, Sir Gilbert Blane says, they point out that in which the cholera sprang up a few years ago.

suppose that even the first, though rapid in its passage, was really a pestilence, and that the statement of the general mortality was not an addition made by Dionysius, while perhaps the Annals merely spoke of an influenza, we find that it occurred only three or four years before the earthquake in Taygetus, by which Sparta was destroyed[626]: and the history of that period has reacht us so imperfectly, that the records of contemporaneous shocks of very destructive force may easily have been lost. As to the year 291, if that date be not still too early for an accurate comparative chronology, and if the eruption of Etna which took place in Ol. 81, fell in the first year of that Olympiad[27], this eruption coincided exactly with the pestilence. At any rate the two events lie very close to each other. As to the epidemic of 301, it probably sprang like the second Attic pestilence, from the embers of the preceding one, which, fanned by favorable circumstances, again burst out into a blaze.

The northern lights too, which were seen at this period, were evidently connected with the ferment in the bowels of the earth. In the years 290 and 295 the firmament seemed on fire[28], broken by flashes of lightning: armies and the tumult of battle were seen in the sky; and sounds were heard, which rarely highten the terrours of this phenomenon except in the arctic regions[29].

[626] This happened in Ol. 79: see Wesseling on Diodorus, XI. 63. I think I can come still nearer to the point: for the fourth year of Archidamus in Plutarch (Cimon, c. 16) is confessedly a wrong number: if the correct one is ιδ instead of δ we get Ol. 79. 2: that is,—if 365 fell in Ol. 99. 3, according to the approximate synchronism with which we must content ourselves for these early times,—the year of Rome 284.

[27] Aelian, in Stobaeus, Florileg. LXXIX. 38, a passage to which I was directed by Scaliger, on Eusebius, MDXC.

[28] Caelum ardere visum est plurimo igni: Livy, III. 5, and 10.

[29] Dionysius, x. 2: Ἐν οὐρανῷ σέλα φερόμενα, καὶ πυρὸς ἀνάψεις ἐφ᾽ ἑνὸς μένουσαι τόπου, μορφαί τ᾽ εἰδώλων ἄλλοτ᾽ ἀλλοῖαι δι᾽ ἀέρος φερόμεναι καὶ φωναὶ ταράττουσαι διάνοιαν ἀνθρώπων.

The keepers of the Books of Fate were undoubtedly consulted about these appearances, and registered the above mentioned facts in their commentaries, which are expressly cited by Censorinus as extant for the year 298[630]. As they were certainly kept in the Capitol, they may very well have been preserved. It is no doubt from the same authentic source that we draw our information of another phenomenon, which is said to have occurred in the year 295: therefore, however incredible it may sound, it ought not to be rejected as an idle tale. There fell, we are told, a shower of flakes, like flesh, which the birds devoured: what remained on the ground did not rot[31]. Perhaps nothing of the kind has been remarkt, since physical phenomena have been generally and carefully observed: yet how short is the time during which such observations, as did not seem intelligible and rational according to the system of the day, have been faithfully registered! But even if no such appearance had ever occurred again, would this warrant us in denying the truth of a statement attested by contemporary authority? No more than we have any ground for scoffing at the Mosaic law, because no such thing is now known, or even conceivable, as a leprosy affecting clothes and walls: since we can merely compare that horrible disease in its present state with what it once was, as we do Vesuvius with the volcanoes which of yore filled whole regions of the earth.

[630] c. 17.

[31] Dionysius, x. 2. Livy, III. 10. It is not even said to have been literally flesh. Was it worms?

CIVIL HISTORY OF THE ELEVEN YEARS PRECEDING THE DECEMVIRATE.

The population of the greatest part of Italy was probably as much lessened by the two great pestilences, as it was forty years after Charles VIII undertook his disastrous expedition across the Alps, in comparison with its state at that epoch. But depopulation is everywhere soon repaired by an increase of births and a diminution of deaths, except where the vital energy of a people is checkt by the influence of deeprooted general distress. Thus at Rome it was not so lasting as the effects which the mortality had on the proportion between the two orders. It affected the close body far more sensibly than that which was open to fresh supplies; and thus it necessarily weakened the houses in comparison with the commonalty. Many of them must have become utterly extinct at this time, as in the fifth century was the case with the Potitii at a similar season. After these years of mortality no Larcius, Cominius, or Numicius, no patrician Tullius, Sicinius, or Volumnius occurs in the Fasti. Three of the houses have a consul at the end of the third century for the first and last time[632]: for the first, perhaps, because the decay of such a number of houses had made room for theirs; for the last, because theirs too had been reduced to a single representative, or a few

[632] Romilius, Tarpeius, Aternius.

more, and soon afterward failed. Several others, though they are found in the Fasti till toward the time of the Gallic invasion[633], disappear then, or shortly after; so that they probably numbered very few families. Thus the patricians more and more lost the character of a body of citizens, and shrank up into an oligarchy, whose pretensions to the privileges of their forefathers were as groundless as their strength was inadequate to maintain them. The clientry of the extinct houses were releast from their independence: and only a few individuals, who entered into new connexions, would be preserved to the order. Most of those who had thus become free inhabitants, would seek admission into the commonalty.

Another inevitable consequence of the calamity was a degeneracy of manners, such as shews itself in the affair of Caeso Quinctius. Pestilences, like inhuman military devastations, corrupt those whom they ruin. No afflictions make men better, except such as lead the sufferers to cast away their follies and to grow manly, such as rouse their energy to encounter the evil at least, if not to overcome it. Very calamitous times however serve to awaken a sense of the defects of existing institutions: many cheer themselves with the belief that the correction of these would restore their lost prosperity: and this motive unquestionably seconded the proposals made at Rome, after the pestilence and the military reverses, for the reformation of the laws.

The first of these bills was brought before the commonalty in the year 292 by the tribune C. Terentilius[34].

[633] The Aebutii, Aquillii, Herminii, Horatii, Lucretii, Menenii, Virginii.

[34] This, or *Terentillius*, is the name in almost all the manuscripts of Livy, III. 9, especially in the best: and according to analogy,—as *Quinctilius* comes from *Quinctius*, *Publilius* from *Publius*,—*Terentilius* must be preferred. *Terentillus* is a form quite inadmissible in a *nomen*, and arose from the shape of the *i* in what is called the Lombard hand, which is scarcely distinguishable from *l*: therefore in

Whether in the following years it was merely revived, perhaps with alterations, or whether new ones were tackt on to it, cannot be collected from the fluctuating language in which the matter is spoken of: and history must now consider all those, which led to the institution of the decemvirate, as a single whole. What this consisted in may safely be inferred from the result. For, though the tribunes may have wisht for more than the decemvirs effected, the latter must have had directions to guide them to the objects of their task.

The plebeians desired a compilation and revision of the laws. Now among the ancients every body of laws like those of Solon, comprised a political code as well as a civil and penal one. That the legislators were to be appointed to draw up enactments on all these subjects, was perceived by Dionysius[635]: and Livy expressly declares that the Twelve Tables were the fountain-head of all law, public and private[36]. Yet in spite of this assertion, from the revival of letters down to the first publication of these researches, they were regarded as merely a civil code, like what the institutes of Justinian would be if they were in the form of laws. The object aimed at was threefold; to unite the two orders, and place them as nearly as possible on an equal footing; to institute a supreme magistracy in the room of the consulship, with less power, and to limit its arbitrary authority; and lastly to frame a national code for all classes of Romans without distinction. Of these objects, which were all suggested by the same spirit, one or other has been taken up exclusively by each of the historians we now read. Dion seizes the first[37]; which indeed, if correctly

III. 10 also we must read *lex Terentilia*. His surname should be written *Harsa*.

[635] Dionysius, x. 3: *Συγγράψαντας τοὺς ὑπὲρ ἁπάντων νόμους τῶν τε κοινῶν καὶ τῶν ἰδίων.*

[36] Livy, III. 34: Fons omnis publici privatique juris.

[37] Zonaras, VII. 28: *Τὴν πολιτείαν ἰσοτέραν ποιήσασθαι ἐψηφίσαντο.*

understood, might serve as a general expression for the whole. Livy holds the second to have been what the tribunes had in view; namely, that the consular power should be curtailed, and restrained by laws[638]. He is also aware that the decemviral legislation accomplisht the third object[39]; which Dionysius distinctly conceives to have been originally the sole one[40].

According to his view indeed, the defects in the state of the law, as it then existed, were, that it was unwritten, like a mere custom, and that in many cases the decision was left to the discretion of the consuls, as it had anciently been to that of the kings[41]. This may certainly have been the case with the penal law: and the same offense may sometimes have been punisht lightly, at others with excessive rigour. But there was no absolute want of written laws. Those ascribed to the kings were collected in the Papirian digest; and there is no ground to suppose that this was kept secret. The evil to be remedied was the diversity of rights. The state of things was exactly like that which led to the framing of the statutes in modern Italy. When the German conquerors and the Romans had grown up together into one nation, with a common language and manners, the universal tendency of circumstances was to mould the two classes into civic communities, with new civil rights, in which those previously kept separate should be blended.

[638] III. 9: Legibus de imperio consulari scribendis. 24: Lex minuendae suae majestatis causa promulgata.

[39] III. 34; Appius says, se omnia summis infimisque jura aequasse.

[40] X. 50: *Περὶ τῶν νόμων οὓς ἐσπούδαζον οἱ δήμαρχοι κοινοὺς ἐπὶ πᾶσι Ῥωμαίοις γραφῆναι.* Perhaps Dionysius meant to signify this want of equality in personal as well as civil rights, when he said (x. 1) that at that time there was neither *ἰσονομία* nor *ἰσηγορία*: properly however (in Herodotus and Thucydides) *ἰσονομία* is that state of freedom where no man is without or above the law, neither a *τυραννὶς* nor a *δυναστεία*, *ἰσηγορία* (in Demosthenes) that state where every free citizen is of equal rank.

[41] X. 1.

The orders in the Roman state likewise are spoken of as being each a distinct people[642]: and they were sundered by a greater chasm than many locally distant from one another. Between such there often subsisted a *connubium* and *commercium:* between the patricians and plebeians the former most certainly did not, and the latter can scarcely have existed, at least in respect to arable land. I have already observed that every cury guaranteed the integrity of its century of arable, and must have had a right to every piece of it in case of a vacancy[43]: and though the plebeian allotments were not in the same circumstances, nothing was more natural than retaliation.

Had it been possible, before the legislation of the Twelve Tables, for the land, which from the time of king Servius down had come into the hands of the plebeians by assignment or sale, to be transferred to the patricians, very few would have been able to save the inheritance of their ancestors through the seasons of general distress and debt; just as in the sequel the small possessors of the domain were unable to keep their land from the rich, who were aware of their wants[44]. It is stated however, and not accidentally or vaguely, that so late as the year 339 the patricians possest no property in the plebeian district[45]; that is, none worth mentioning,

[642] Τὰ ἔθνη, Dionysius, x. 60: *id genus*, of the plebeians, instead of *gens* (see Vol. I. p. 315, note 807), Livy, VI. 34.

[43] See above, p. 157.

[44] The same thing has happened within the last three centuries in the ancient territory of Latium. Before the year 1590 the vale of Aricia was divided among a very great number of small proprietors: during the scarcity the house of Savelli bought them all out but four: and these under Alexander VII were also reduced to straits, and compelled to sell to the Chigi family, which had acquired the barony. The few that are still left, in the district of Tivoli for instance, are disappearing one after another; since, after any misfortune, they have no choice but to sell, either immediately at any price they can get, or after having for a time been a prey to the usurers.

[45] See above, note 343.

for from the time of the decemviral legislation the *commercium* unquestionably subsisted. But such calamities as might have occasioned extraordinary transfers of property had rarely prevailed, and never long together: and without such the quantity of land which passes annually into new hands by sale, is very trifling[646]. The view here taken seems to be confirmed by the fearful severity of the ancient law of debt: which being analogous to those enacted for securing the holders of bills, was indispensable when the monied men were unable to seize the lands of their debtors. Its continuance must have been regarded by the wise part of the plebeian leaders as the smaller evil of the two, if, while it was impossible to avoid money transactions with those who, like the Lombards and Jews in the middle ages, had all the money in their hands, the right of acquiring plebeian land must have been substituted in case of its abolition[47]. The practice of pledging the person was confined to the plebeians[48]. The same thing may be inferred as to imprisonment, from the jest of Appius the decemvir, who called the gaol the plebeian's lodging[49]: whereas before the time of the Twelve Tables all patricians could keep out of confinement by giving bail, and thus were

[646] Far the greatest part of the landed property in France that belonged to the nobles before the revolution, is still in their hands, notwithstanding the confiscations.

[47] Even while in a state of dependence and bondage, the German peasantry was upheld by the sound sense of our ancestors, who did not allow the possessor of an estate to usurp land of socage tenure (*Bauernland*) and convert it into copyhold (*Hoffeld*), or into farms held for the lord's use (*Meyerhoefen*), or to grant it to any but socage tenants. The baneful liberty of changing all kinds of tenure at pleasure on the sale of land is now extirpating the yeomanry, and is bringing on a state of things far worse than the old rude bondage.

[48] Vol. I. p. 562.

[49] *Quod domicilium plebis Romanae vocare sit solitus:* Livy, III. 57. Of the seeming instance to the contrary in the process of Caeso Quinctius I shall speak further on: see note 662.

secured from personal punishment, whatever offenses they might commit. The fines imposed by the consuls were limited in the case of the patricians to a small sum, and were subject to an appeal to their great council; while for the plebeians they were still wholly indefinite and discretionary[650]. That there was a diversity of rights is to be presumed in all that infinite variety of transactions, in which the plebeian classes are represented as giving their consent. In the case of wills it plainly appears from the different courts they were confirmed by.

But as in Italy, before the compilation of the statutes, there were other Germans beside the Lombards, living according to the Salic or Alemannic law, so among the patricians there was as much difference in their rights as in the origin of their tribes. The law of each race was a heritage transmitted from generation to generation, like its dialect, manners, and worship. When the elders could not agree about two contending assertions, the emperor Otho did not select that which he deemed the best, but referred the decision to the judgement of God. The Sabines did not part with their religious usages when they became Tities: and as little is it to be imagined that they renounced their common law; unless it contained any articles irreconcilable with that of the first tribe. These rights of the two tribes of the major houses are what are represented as the laws of Romulus and Numa: and when it is said that Tullus and Ancus framed some additions to them[51], these, according to the same system of personification which prevailed with respect to the assignments of land[52], must mean the rights of the Luceres and of the original plebs. Tarquinius Priscus is not named among the lawgivers, any more than among the distributers of land, because no distinct part of the nation traced its origin to him. But the most prominent

650 Above, p. 231.

51 Tacitus, Ann. III. 26.

52 Above, pp. 158, 159.

place in the summary of Tacitus, which, under a thin veil, enumerates the several rights of the tribes, is occupied by Servius Tullius. Every transaction in which the five classes bore part, must be conceived to have been referred to him. In addition however to these original plebeian rights, we are also to suppose that he enacted laws, in the proper sense of the word, for the whole nation, the same which were abolisht by the Tyrant, and are even said to have been obliterated.

Beside the patricians and the commonalty, the state contained colonies and other dependent townships, where peculiar rights must have existed. There were the clients too, who would have their patrons for their judges, and the customs of the patrician tribes for their law; and independent individual erarians, who could have no determinate law. The general analogy of antiquity leads us to conjecture, that a litigation between members of different classes would be tried by the law of the defendant.

As a chaos of this sort almost always has a venerable look in the eyes of those who have grown old in commerce with it, prejudices were shockt by the project of replacing it by a uniform law of the land: which however was not designed to be the invention of any fancied theoretical wisdom, but a selection from the institutions already in force for one part or other of the nation[653]. Passions however were much more violently irritated by the plan of imparting the privileges of the first estate to the rest of the citizens, and above all by that of putting all classes on an equal footing, and uniting them into one nation, of dividing the government and the supreme

[653] Dionysius, who praises the wisdom and wholesomeness of the Twelve Tables, and supposes the bills for appointing the commissioners to have had no other object than the framing of such a code in the room of arbitrary power, shews a remarkable flexibility, when he also praises the resistance of the ruling body, who stirred heaven and earth to prevent the point from being carried.

authority between them, and of replacing the unlimited power of the consul by an office so constituted as to prevent abuse and arbitrary dealing in the magistrate invested with it. To accomplish this purpose, the bill proposed the appointment of ten commissioners, of whom five were to be chosen by the commonalty, undoubtedly in the assembly of the tribes[654]. The other five, who represented the patricians, were to be named by them. Thus, supposing that for this turn the curies had been allowed to nominate both consuls, there would have been no need of new elections: the consuls, the questors of blood, and the warden of the city, with the tribunes, would have formed a decemvirate. If the intention was not that this body of the magistrates of both orders should be invested with the legislative power, it was understood that the commissioners when elected were to take place of all the officers of the state.

C. Terentilius promulged his bill in the year 292, while the legions were in the field[55]. After the return of the consul Lucretius it was past by the commonalty, but rejected by the senate and the curies[56]. It is not stated indeed anywhere, but it is evident in itself, that a

[654] Livy (III. 9) speaks only of the five lawgivers that the plebs was to elect: Dionysius (x. 3) of decemvirs, without mentioning the order they were to come from: his only mistake is believing that the plan at the very first was to have them elected by the centuries. The thing explains itself: so does the errour that runs through Livy's account, of supposing that the plebeians wisht to usurp the legislation entirely to themselves. It is true the first decemvirate was not divided: it consisted purely of patricians: but the patricians had the possession of authority, once legitimate and always maintained, and of power.

[55] This was to gain time: for where violent interruption might so surely be anticipated, the question could not possibly be put to the vote before the return of the army.

[56] Livy, III. 10. *Jactata per aliquot dies cum in senatu tum ad populum res est:* from which it is clear, if express evidence on the point were wanted, that debates took place in the comitium as well as in the forum.

bill which met this fate could not be revived within the same year: such regulations must exist in all free constitutions. Thus the patricians, while they observed all the forms of law, might again have parried the measure the next year, when A. Virginius either revived the bill of Terentilius, who, as he is not mentioned again, seems to have been taken out of the way by death or accident, or brought forward a still more extensive one: and so they might have gone on from year to year, but that the veto of the aristocratical branch of a legislative body can never in the long run withstand a measure the need of which is strongly and generally felt. Many a well-meaning man, who has voted according to his prejudices, and in subservience to the maxims predominant in his order begins to distrust them, when they are rejected by some of his brethren whom he respects. Many grow weary of the contest, when the gradual growth of the minority shews that the question is not likely to be abandoned: and a younger generation springs up, inclined to doubt at the least about those prejudices, which their simple fathers believed to be indisputable truths. Hence calculating politicians may have wisht for a violent decision, in which the commonalty should put itself in the wrong, as a security against the ultimate compliance of their own order. Fanatics might hope for a complete counter-revolution from it, forgetting how shamefully and deplorably the attempt had ended ten years before.

In ordinary times the patricians with their clients were no doubt the stronger party in the forum. It must have been difficult to induce the countrymen to stay in town after they had despatcht their market-business, for the sake of helping to bring in a law from which they had no immediate personal benefit to expect. They would feel little inclined to gratify their leading men at the expense of passing the night in the arcades about the forum, or in the porches before the temples[657]. Still

[657] As during the tumults in the times of the Gracchi.

under a Roman sky they might do so through a great part of the year: and if on an exigency they resolved to stay, the tribunes had an overwhelming majority at their command; which, if they desired it, would have followed them in an insurrection.

On the regular assembly-days the patricians interrupted the harangues of the tribunes and the business of voting, by using the same tactics as in contending against the bills of Publilius. They even drove the commonalty and the tribunes off the field. Many suffered ill usage from them, even to bloodshed; and had not the dismal occurrences of this period been so studiously veiled, we should certainly read that not a few lives were lost. The ringleader in these outrages, and that not once but often[658], was Caeso Quinctius, the son of Lucius Cincinnatus, a young man proud of his extraordinary bodily strength and his eminent military exploits, as well as of his birth, and full of contempt and rancour toward the plebeians, whom he maltreated by gesture, word, and deed, even worse than any of his party.

Such indignities could not fail to rouse the multitude from their indifference. Hence a tribune might reckon on the assistance of the plebeians, with arms in their hands in case of need, if he cited the offender before the court of the tribes on a capital charge under the Icilian law, for having disturbed the tribunes in the exercise of their functions[59]. When matters came to this pass, the fanatics awoke from their intoxication, and saw the gulf gaping at their feet: these same men however, as soon as the danger was over, forgot it, and called it forth again. The most eminent among the patricians now emplored forgiveness for their favourite: and perhaps the entreaties they stoopt to would not have been vain,

[658] Hoc duce saepe pulsi foro tribuni, fusa ac fugata plebs est: Livy, III. 11: where scenes of this kind are described.

[59] See p. 232.

had not a still more atrocious outrage been brought to light. M. Volscius Fictor, who had formerly been a tribune, declared that soon after the plague he and his aged brother had fallen in with a party of patrician youths who were rushing in a drunken riot through the Subura; when Caeso, their leader, without any provocation knockt down the old man, still feeble from the sickness he had just got over, and injured him so that he died soon after. He had brought a complaint before the consuls without effect: they had dismist it. Refusing to assign a judge to a plaintiff was probably a very usual practice, and was one of the worst among those arbitrary proceedings of the consuls, which the tribunes aimed at suppressing. Outrages, such as that here complained of, were frequent in the Greek oligarchies, and were often the cause of their fall[660]. Even under the Athenian democracy, it was high birth that spirited Alcibiades in the wantonness of his strength to somewhat similar excesses. That at Rome no doubt is also an instance of the depravation of manners produced by the pestilence[61].

This tale spread fury through the assembly: it was with extreme difficulty that the tribunes saved the

[660] As in the case of the Pentalids at Mitylene: Aristotle, Polit. V. 10.

[61] There may have been a previous quarrel, which led to the blow: if so, it may be said that the unfortunate man might have avoided the last outrage by slavishly brooking the insult. But the story that a person was slain not two years before in what was then the most fashionable and populous street of the city, cannot have been a fabrication. Though the accuser was forced to go into exile, this proves nothing: the curies treated him as an enemy. In order that Cincinnatus might act like a just man, not as a father sacrificing justice to his feelings, Volscius was said to have deceived the people by false evidence: and the point desired appeared to be establisht, because the court which condemned him was taken for the plebs, who had thus done homage to the truth. A way of bringing the falsehood to light was easily invented: Livy, III, 24.

accused from being torn to pieces by the enraged multitude. When it is said however, that they came to a compromise with the senate, to leave him at liberty, and to accept ten sureties in three thousand ases apiece for his appearance in court, the nature of the Icilian law is misunderstood, according to which the accused was only bound to find sureties: and this point must have been settled before Volscius was heard, who only appeared as a witness, and, though by his disclosure he destroyed all possibility that any indulgence should be shewn, still produced no change in the nature of the charge brought by the tribunes, his evidence being no charge in itself[662]. The very next night Caeso withdrew from Rome, and went into Etruria. Probably he did not deem himself safe in any of the remaining Latin towns. The trial however was stopt, as if he had legally taken up a different franchise[63]. The sum in which his sureties were bound was forfeited to the temple of Ceres[64]. The

[662] This disposes of the seeming difficulty, that in so flagrant a case even a patrician might have been thrown into prison. Caeso was the first person who gave sureties according to the Icilian law, for having disturbed the tribunes in their office: *hic primus vades publico dedit.* The threat of the tribune in Livy, III. 13, refers to that clause of the law by which summary justice was provided against such as refused to give bail. Since the people, when assembled as a court of justice, followed up their verdict on the charge by confirming or remitting the penalty, the evidence offered served to determine the feelings of the soverain, as well as the conviction of the judge, and therefore very frequently bore upon matters entirely forein to the articles of the charge.

[63] If he had gone to a place with which the *jus exulandi* subsisted, this would have followed of course: it is on account of the exception, that both the circumstances are noticed by Livy. The author of the Declamation *pro domo* imagines that Caeso was tried by the centuries, and that judgement was pronounced: 32 (86).

[64] Like the fine to which the three turbulent houses are condemned, in Dionysius, X. 42, and that of T. Romilius, in X. 52. The emendation of Gronovius, in Livy, III. 13, *hic primus vades publico dedit*, is certainly right. The expression however is incorrect; for the

tribunes had as little authority as inclination to remit it: but Cincinnatus was not the person from whom they exacted it. They could only come upon the sureties: so, if the 30000 ases were unmercifully wrung from the indigent father[665], it must have been by the sureties to indemnify themselves. Without doubt however this statement is a mere fiction, ignorantly fabricated, for the sake of explaining how a man, lookt up to by his order as the head and safeguard of the commonwealth, came only to have a plough-land of four jugers. What became of the duty of the clients and gentiles to contribute to pecuniary penalties, if this was not a case it applied to? T. Quinctius and nine other members of the house, if it contained that number of men of property, would be the sureties: the whole sum was no more than the fine which the consuls were shortly after empowered to lay on an individual plebeian: and if the patricians were unwilling to let the loss fall all on one house, a paltry draft on the public coffer would indemnify it, as it did others in like cases[66].

It is stated that Caeso's condemnation made very different impressions on different classes of the patricians; that the courage of the elder droopt; while the younger became more furious than ever[67]. Livy adds, that Caeso's comrades were the most violent of all; by whom, there can be no doubt, he meant the young men: but it is quite certain that here again the distinction was between the greater and lesser houses[68]. The Quinctii

penalty cannot have been paid to the *populus*, which would immediately have canceled it.

665 Pecunia a patre crudeliter exacta est: Livy, III. 13.

66 In the case of the rioters in 290: Dionysius, X. 42.

67 Livy III. 14: Cum—seniores Patrum—cessissent possessione rei publicae, juniores, id maxime quod Caesonis sodalium fuit, auxere iras in plebem.

68 It is to be expected that the notion that the *majores* and *minores* formed two distinct parties among the patricians, which the

belonged to the latter[669]: and thus the connexion of the occurrences related becomes perfectly clear. The first two tribes were ready to give way: the patricians of the lesser houses, who were far more numerous, shewed greater obstinacy, but also greater policy, than ever. They renewed their efforts to prevent the taking of the votes, but were careful that nobody should make himself more conspicuous than the rest. As soon as the commonalty proceeded to vote, it was like a sudden storm bursting upon the whole forum. On all other days they refrained from every act of violence, and strove rather to win the favour of the plebeians; of some by marks of friendliness and respect; of others by liberality and relieving their wants, as was suited to each case.

This artifice in time perhaps might actually have misled the multitude to believe that, but for the tribunate, general kindness and concord would prevail. It was probable indeed that some unseasonable sally would frustrate the stratagem: but on the other hand conduct so evidently the result of a calculating policy occasioned a suspicion that some very dangerous plot was in preparation. A rumour found credit, and perhaps deserved it,

writers of the Augustan age did not recognize in the old books, will for some time to come be regarded by many as a mere dream; though the existence of these parties is no less real and certain than that of the patres and the plebs. Among the passages which have completely convinced me of this (see Vol. I. notes 832 and 1143, and above, p. 114, and note 471), the one last quoted is of great importance: and so is that in Dionysius, x. 48, where the *πρεσβύτεροι καὶ νέοι* promise the accused consulars not to abandon them. If this distinction had only occurred in one or two places, the common construction of it might be maintained: but it appears very frequently down till about the year 310, and never after: though the contest between the patricians and plebeians lasted more than a century longer, the young men were no doubt just like those of earlier times, and the chronicles became more and more copious.

669 They are among the Alban houses of king Tullus: see Vol. I. note 916.

that Caeso had been in the city, and that a conspiracy was on foot for murdering all the leading and most obnoxious plebeians, especially the tribunes. Prodigies were announced, which made men's minds still more uneasy. It seemed certain that the times were big with some dreadful issue.

Many persons had gone to rest one evening under this distressing anxiety, when the city was alarmed out of its midnight slumber by a warshout and a blast of trumpets from the Capitol. Some fugitives who had escaped from thence reported, that a band of Romans had seized the citadel, and were putting all to the sword who would not take the oath they tendered. This, the plebeians thought, must be the outbreak of the expected massacre: it must be Caeso with a troop of bandits and conspirators. Till morning came, no one ventured to stir from the quarter where he lived. Guards were posted on the fortified hights of the Aventine and the Esquiline, and in the streets and lanes leading up to them.

The assailants were Roman outlaws and runaway slaves, with the retainers of a powerful Sabine, Appius Herdonius, who had put himself at the head of the enterprise[670]. They had dropt down the river in boats, had landed on the nearest lone spot, and having entered the city by the Carmental gate, which from a certain religious notion was never shut, had mounted through the *vicus jugarius* to the Capitol. But though superstition

[670] Dionysius, x. 14: *Συνήθροιζε τοὺς πελάτας.* The number of his followers is stated by Livy at 4500 men: this is nothing but a Roman legion of five cohorts, according to the full complement, of thirty men to a century. May not this also have been the origin of the statement that there were 4000 or 5000 Fabii? only that the genuine number 4500 does not happen to have been preserved? Dionysius, to avoid the harshness of a precise statement softens it down in his usual way to a *δύναμις ἀνδρῶν τετρακισχιλίων μάλιστα*: this however was meant to be the precise number: 4000 men was the amount of a Sabine legion: see p. 84.

might enjoin that the gate should be kept open, how came it to be left without a strong guard, even supposing there was a truce with the Aequians and Volscians, as well as with Veii? more especially as rumour cannot have been totally silent on a meeting of outlaws a few miles from the city. Here are clear marks of treachery. Many who were privy to the plot, may have shrunk back at the critical moment; when they saw the pillagers, whom no authority would be able to check, close at hand, and could not disguise from themselves, that the forein chief would either seize the soverainty as the price of his undertaking, or would only depart from the city with his booty and captives, when it was sackt and in flames. When morning dawned, Herdonius saw his expectations disappointed, and all Rome prepared for resistance. Even the slaves turned a deaf ear to his summons to freedom. No chance of escape for the adventurers remained, except in holding out, to see if any of the neighbouring nations would take advantage of the opportunity. To get away by letting themselves down the precipitous cliff was impracticable; for the Romans would have rusht upon them from the gates with a far superior force, before they could reach the river, or even form at the foot of the rock.

The consuls manned the walls and gates in case of an attack from without, and were anxious to retake the Capitol forthwith, before any enemy could appear. For this purpose they summoned all who were bound to serve, and began to administer the military oath. This was done in the forum under the eyes of Herdonius and his men. The place and the juncture called for unqualified obedience. But C. Claudius, the brother of the dreaded Appius, was one of the consuls: the Capitol could not have been seized without treachery: and whatever might previously have been the hopes of Herdonius, he must now be glad to save his life by becoming the tool of the patricians. In this predicament were the plebeians to

pledge themselves by a solemn oath to blind obedience? were the tribunes to give up their protecting power? It was enough, they thought, to guard the gates and walls: if the commonalty took care not to be ensnared, the friends and clients of the patricians, who had been let into the citadel, would be let out again just as quietly as they came in[671]. Meanwhile this was the moment for passing the bill. Now, when the plebs was under arms, and gaining fresh strength every hour from the country-people who were flocking in, none would interrupt them in voting: and if the patricians had not quite lost their senses, they would forthwith give their assent to the bill, when past by the commonalty. That being done, having oath for oath, the plebeians might safely enlist.

In the unhappy confusion thus bred by a suspicion which was but too plausible, P. Valerius, the son or grandson of Publicola, saved his country. Being the collegue of a Claudius, he must have been the consul chosen by the centuries; his heart bore him witness that he was free from guile; and he conjured the tribunes not to waste hours, which, if a rumour of what had happened reacht the enemies of Rome, might be fatal to the republic. He solemnly vowed to exert the power of his office in enabling the assembly to vote without interruption, after it had heard the objections of the consuls: and should they persist in passing the bill, he pledged himself that it should be confirmed and made law[672]. On this promise the plebeians took the oath, and formed into legions. Being

[671] Patriciorum hospites clientesque, si perlata lege frustra tumultuatos esse se sentiant, majore quam venerint silentio abituros: Livy, III. 16.

[672] His engagement, which in Livy is no more than a promise that the *concilium* shall not be interrupted, must be understood in the sense given to it in the text: else the language of Dion, who is so cautious a writer, would be too strong: *ὁ δὲ ὅμιλος οὐ πρότερον ἐν τοῖς ὅπλοις ἐγένετο πρίν τι πλέον σχεῖν τῶν εὐπατριδῶν*: Zonaras, VII. 18.

reinforced by the Tusculans, whom their dictator L. Mamilius had brought unsummoned, the Romans attempted next morning to storm the citadel. They had to begin with taking the *clivus*. The ground was contested with equal desperation on both sides. At length the assailants, with a heavy loss of lives, overpowered the outlaws. The most resolute of the survivers still defended themselves in the Capitoline temple, the portico of which they had barricaded. Here P. Valerius fell, heading the attack. The Romans made very few prisoners: these, according to their condition, suffered the death of freemen or of slaves.

It can scarcely be doubted that Caeso was present, and that he perisht in this enterprise. This must have been distinctly believed by the authors whom Livy was following, when he wrote, that two years afterward, Caeso being irrecoverably lost to the commonwealth and to his friends, his family sought a just and pious vengeance on the person who had borne witness against him[673]. An emigrant might be restored to his order as long as he lived: nor would it have been more difficult for his father to effect this, than to drive the witness into exile. In the mention of the rumours spread just before the attempt was made, Caeso's share in it is pointed out. But the writers who represented him as the victim of false testimony, could not expressly own that he had fallen in the Capitol amid a band of robbers and enemies of his country.

P. Valerius was interred with great solemnity, to defray the expense of which the commonalty raised a

[673] Livy, III. 25. Quoniam neque Quinctiae familiae Caeso, neque republicae maximus juvenum restitui posset. The mention of him in the Declamation *pro domo*, 32 (86), along with Camillus and Ahala, as having been recalled from exile, is of no weight whatever. It is a mere conceit of an impudent and ignorant rhetorician, of just the same stamp with the assertion in the same place, that all three were condemned by the centuries, and with other absurdities pointed out in these notes, which are so many fresh proofs of the spuriousness of that speech.

voluntary assessment[674]. The temple of Jupiter was purified from its desecration. And now the tribunes called upon C. Claudius to redeem his collegue's pledge. He refused to act by himself in a business of such moment. But instead of convoking the centuries, which alone had a right to fill up the vacant consulship, even supposing they had given up the other for ever, he got the curies to confirm L. Cincinnatus, who was appointed consul by an ordinance of the senate[675]. A whole web of artifices was spun to entangle the commonalty. All their serviceable men, relying on the word of Valerius, had sworn to follow the standards, and had not yet been disbanded. They were bound therefore to march whithersoever the consuls should order those standards to be carried, and no less so to unqualified obedience. Consequently, the leaders of the senate argued, they must accept any law that might be proposed to them. That such a proposition might be made on any inaugurated spot whatever, as well as on the Field of Mars, nobody disputed, any more than that an army with its full complement was equivalent to the *exercitus* of the centuries. Now supposing that the comitia were held at a distance from Rome, the relations of the soldiers in the city and its outskirts would be left defenseless in the power of the patricians, as hostages for the obsequiousness of their husbands and fathers. The few who refused to be bound either by this tie, or by the obligation of their oath, were not worth considering: and should it be deemed fit to chastise them, this might easily be done with the arms of the allies, who were now in a state of dependence. The augurs therefore proceeded to the lake of Regillus, to inaugurate a field there for the comitia, in which the perpetual concordate and all other compacts between the orders were to be declared void and canceled. After this the constitution was to be restored, not merely as it

[674] Livy, III. 18. [675] See note 425.

existed before the Secession, but with all such changes as might be necessary to establish the absolute power of the curies: and this was to be done by a proceeding which according to the letter was perfectly legal; so much so, that whoever opposed it would be no better than a rebel. For upholding this new order of things in the first instance a dictator was to be created. Such were the dreams of senseless men, who did not reflect that the profligate hypocritical abuse of the forms of law will drive the gentlest to fury, and will totally break the spell on which the power of those forms depends. If we further take into account that the election of Cincinnatus was itself illegal, it is plain that an insurrection would inevitably have broken out, before a single cohort past through the gates. Accordingly, when the moment for executing this mad scheme drew near, the courage of the very hardiest failed them. They agreed to abandon all their projects, on condition that the law should lie dormant for that year. So completely however were the patricians foiled, that this time again they could not prevent the reelection of the tribunes, who all continued in office from 293 to 297; whereas they were forced to give up that of Cincinnatus[676]. Or did he himself, indignant at the faction which recklessly conjured up the spirits of destruction, and then trembled at their appearance, refuse a second time to encounter the whole odium of a criminal enterprise, and the disgrace of shrinking from its execution?

Two years after however we see him at the head of the government as dictator. The questors in 295 had

[676] The old Annals can have related nothing more than that the senate wanted to make Cincinnatus consul, and that this design was abandoned so completely, that an edict was issued forbidding votes to be taken for him: the account of what led to this was put in to fill up the picture. Its author wisht to glorify his hero, but has not succeeded: if he was the pillar of a good cause, he shrank from it through a weak fear of being undeservedly taxt with ambition.

accused M. Volscius before the curies[677] of having borne false witness to the ruin of one of their order. The tribunes retaliated for the interruption of their assemblies by preventing the patricians from meeting on this trial[78]. Their opposition, which neither the questors of that year nor their successors could get over, gave way in 296 before the power of the dictator; and the accused was forced to go into exile. This appears to have been the sole object of that dictatorship which Cincinnatus laid down on the sixteenth day of his office. A father may be pardoned for avenging the blood of his child, though the sentence which declared Caeso a public enemy was amply deserved: the faction he belonged to loaded itself with crimes of a far deeper die. Dion tells us, that they caused many of the boldest among their adversaries to be assassinated[79].

We find it difficult to comprehend and believe in the existence of the spirit with which the oligarchies of antiquity maintained the power they at all times abused. That spirit however is sufficiently manifest in the oath which they exacted in some of the Greek states from their members, to bear malice toward the commonalty, and to devise all possible harm against it[80]. This must seem incredible to persons acquainted only with the mild and amicable footing on which the several orders stand

677 They had the same jurisdiction over a plebeian who had injured one of their body, that the plebeians had over a patrician in a like case.

78 Dion had previously mentioned the right of the tribunes to prohibit an assembly of the populus: Zonaras, VII. 15, quoted in note 367.

79 Dion, Exc. de sent. 22. p. 151 ed. R (and Zonaras). *Οἱ εὐπατρίδαι φανερῶς μὲν οὐ πάνυ—ἀντέπραττον, λάθρα δὲ συχνοὺς τῶν θρασυτάτων ἐφόνευον.*

80 Aristotle, Polit. v. 9. *Νῦν μὲν ἐν ἐνίαις (ὀλιγαρχίαις) ὀμνύουσι, καὶ τῷ δήμῳ κακόνους ἔσομαι, καὶ βουλεύσω ὅ τι ἂν ἔχω κακόν.* A scoffing anapestic cadence!

under a monarchy. But in republics even down to our own days traces of the same horrible spirit appear. Through its influence, not fifty years ago, several worthy members of the government at Friburg were punisht as traitors, for advising that the rights, which had been wrested from the citizens and the canton, should be given back. The same spirit in Schwytz has robbed the new subjects of their franchise, and in the North-American slave-states makes it a crime to give any instruction to persons of colour. It was by the very same infernal spirit that Sparta was led to her tyrannical measures against her helots and subjects, and Florence to those which desolated Pisa.

The assassinations, Dion continues, did not effect their end. On the contrary, the more furiously the tyrants raged, the more stouthearted their adversaries became. The freedom of the Roman people was consolidated, like religious liberty in persecutions, by the blood of martyrs. From the passing of the Publilian law it kept constantly gaining in strength and compass. It is recorded as a step in its progress, that in the year after the dictatorship of Cincinnatus, 297, the number of the tribunes was doubled, and became ten, two from each of the classes[681]. As they were bound to give aid in person to every plebeian, not only against oppression on the part of the magistrates, but against all illtreatment by individuals[82], their previous number may have proved inadequate at a time when outrages were so frequent: and a numerous board has a more dignified appearance, and acts with greater vigour. So did that of the tribunes; which, till it gained its point with regard to a new code of laws, bound itself to unqualified unanimity[83]. The increase of their power is visible the very next year, 298, when Icilius and his collegues were able to compell the consuls not to set aside

[681] Livy, III. 30.

[82] Livy, III. 19: Si quis vobis—de vestra plebe—domum suam obsessam a familia armata nuntiaret, ferendum auxilium putaretis.

[83] Dionysius, x. 31.

a plebeian by-law, as they wisht to do, and as their predecessors must often have done, but to lay it before the senate, and allow the tribunes to defend it[684]. This renders the Icilian law for assigning the Aventine to the plebs[85] memorable in the history of the constitution; as it was acceptable to the commonalty for the immediate benefit they derived from it.

By this law the plebeians, who from the time of king Ancus had had a settlement on the Aventine, so that there cannot be a doubt that some of it had been assigned to them, acquired the rest of that hill, which was still part of the domain, enjoyed by individual patricians, and in great measure covered with houses, rented no doubt by the plebeians. Those who had an equitable title were indemnified for the value of their buildings[86]. The assignment was made by dwellings, each being given to a father of a family. The houses were not occupied by several persons as joint property: but each occupier had a story in absolute ownership, and could alienate and transmit it[87]. There must have been a clause to provide

[684] Dionysius, x. 31.

[85] Livy merely says, *de Aventino publicando lata lex:* III. 30. Here *publicare*, which properly signifies the confiscation of private property for the state, is applied to a possession which the state resumes and disposes of at its pleasure, as in IV. 48: *cum — magnae partis nobilium eo plebiscito publicarentur fortunae.*

[86] The erroneous notion formed by Dionysius as to the object of this law has already been noticed in note 315. Every possession was assuredly given up, only with this distinction, that a fraudulent possessor was not indemnified for his buildings, an honest one was. The compensation was unquestionably paid by those who got the house. Thus the part of the hill which was already built on, and that which was still open, might be divided into allotments without any absurd inequality.

[87] This partition of property in houses by stories is customary in Rome at this day, and surprises foreiners, just as it did Dionysius. May not a house so divided, or capable of such a division, and of being let out by stories, have been termed an *insula?* and may not the *procurator insulae* in Petronius, 96, be the proprietor's agent?

that, even if a general *commercium* should be introduced, no patrician should ever acquire property in land on this hill. Else no reason can be imagined for excepting this law, along with those on which the liberties of the commonalty rested, from the unlimited power of the decemvirs[688]. It was of the utmost importance for the independence of the plebeians, that the patricians should not be their landlords, and thus able to controll their votes. It was of great consequence too, while bloody feuds were so likely to break out, that the commonalty should be in exclusive possession of their suburb on the Aventine. That hill was very strong. From the city, before the Clivus Publicius was opened, there was no access to it but by footpaths. The only carriage-road led through the Porta Trigemina to a row of houses on the riverside, by the salt-magazines and the quay, out of the city. At its top was its citadel. Probably the peculiar distinction it possest, of lying without the pomerium[89], which furnisht the antiquaries under the emperors with matter for so much conjecture, was also guaranteed by the Icilian law: it exempted the ground from the civic auspices.

In the year 300 a very great step was gained by the law of the consuls Sp. Tarpeius and A. Aternius, which set a limit to the imposition of arbitrary mulcts on the plebeians[90], fixing two sheep and thirty beeves as the

[688] Livy, III. 32.

[89] Till the reign of Claudius: Gellius, XIII. 14. Hence even Varro does not include this *borgo* in his topographical survey of the city.

[90] The fixing a certain number of head of cattle for the highest mulct is stated by Dionysius, X. 50, as the purport of the law of these consuls; and Cicero, de re p. II. 35, is undoubtedly speaking of the same law: he ascribes the valuation at a certain sum of money to the consuls of 325; which coincides with the *aestimatio multarum* attributed to them by Livy, IV. 30. The very nature of the case implies that this valuation must have been of a later date; and the statement which makes it a part of the Aternian law (Gellius, XI. 1.

extreme[691]. Even this was not to be laid on at once: the consul began with a single sheep[92], which served as a punishment for a proletarian, and as a warning for a man of property. From the same principle it follows that the fine could only be raised by degrees[93], till it reacht the highest amount, by a single head each time; probably too only from day to day, exclusive of the *dies nefasti*[94]. Thus no one could be ruined by excessive fines, unless he was guilty of contumacy. For, if the consul's command was unreasonable, the tribunes were ready to afford protection: their extraordinary intervention was not derogatory to the character of a supreme magistrate, as regulations prescribing the amount of a fine in every particular case would have been. Whether they should grant protection or not, it rested with their conscience to decide; and if any one inclines to doubt that it was commonly refused to the disobedient, he must forget that the Annals merely give us a picture of times of great

Festus, Peculatus) is most certainly erroneous. Verrius had evidently heard something about the consuls of 302, connected with this subject; but Festus has rendered it quite unintelligible. The discretionary determination of the sum according to circumstances was the characteristic of a *multa:* a *poena* was unalterably fixt.

691 It is not owing to an oversight, but through one of his shrewd inferences, that Dionysius inverts the number into thirty sheep and two beeves: the number of the former cannot possibly have been such as to be equivalent to an ox: nobody, when speaking of pounds, will mention a greater number of shillings than is contained in one. The conceit of Gellius, that sheep were scarcer and dearer than oxen, may serve as a standard of a pedant's common sense.

92 Gellius, XI. 1.

93 To pour in one measure after another was called *multare*: Varro, de l. L. v. 36 (IV. p. 48).

94 In Gellius, XI. 1, all the manuscripts in both places have *in singulos dies*. The last word has been omitted, because it was held to be monstrous that a fine of this magnitude should be repeated several times over. But the editors have corrected the writer himself: what he read in his authors must have agreed with what I have here stated.

excitement. Still disputes could not fail to arise on this head between the tribunes and the consuls: and it may be presumed that, at least in the sequel, the commonalty on such occasions interposed with a judicial authority, such as the patricians had already acquired in behalf of their own body[695].

Another provision of the Aternian law gave all magistrates the right of imposing fines[96]. Perhaps the warden of the city may not have had this power before. As to the questors of blood, it would have been strange if, possessing the higher power, they had wanted the lower. The tribunes and ediles can never have been without it in relation to their own order: nor can they have acquired it with regard to the patricians till later.

In the same year, the ninth after Terentilius first brought his bill before the commonalty, the senate and the curies at length consented that the laws should be revised. The manifold distresses of the times may have awakened a feeling in them, that no blessing rested on the cause they were maintaining: persons of gentler disposition may have longed for concord: and hopes may have been exprest that it might even appease the wrath of the heavenly powers. Those who were thoroughly headstrong, were awed by the condemnation of several of their leading men, who had anew been violently disturbing the plebeian assembly in 299, and afterward, in 300, by that of the consuls who had screened them.

The ordinance seems at this period to have been drawn up in the most general terms, and the question as to the representation of the two orders in the legistative body to have been postponed. Three senators were commissioned to go to Athens, to bring back the laws

[695] See p. 231. This explains the *sacramentum multae* of which Cicero speaks, de re p. II. 35: for the *sacramentum* was a stake which could only be forfeited by a judicial decision.

[96] Dionysius, x. 50.

under which that city, having risen to a new life from its destruction in the Persian war, was then flourishing as the most glorious and powerful not only of the Greek, but of all republics. Their names are recorded[697]: no doubt they were preserved in the books of the pontiffs. But though the fact of their being sent across the sea must be held to be perfectly certain, still the name of Athens might have been thrust in by later writers, just as arbitrarily as Pythagoras was inserted in the legend of Numa, and Dionysius in that of Coriolanus; just as the expedition of Laches was converted into a Carthaginian one. If this question were to be decided by the relation between the Attic civil law and that of the Twelve Tables, it would be necessary to suppose that a mistake of this kind had been made. For in whatever is essential and characteristic, with regard to personal rights, and to all the forms of legal acts and judicial proceedings, the two codes have not the slightest resemblance. Wherever any can be traced, it either relates to objects the nature of which produces a sort of general uniformity, or it is grounded on some principle far more widely spread, such as the institution of the houses. But in fact these arguments are equally conclusive against referring the origin of this part of the decemviral code to that of any Greek city, except those of Italy: and so far as the institutions in these coincided with the Tables, it was needless to seek among them for what they must themselves have adopted from the Italian nations. Besides why may not the embassadors have gone abroad to imbibe wisdom from a state renowned far and wide for it, but afterward have found it inapplicable to the condition of Rome? Assuredly however nobody thought of altering the civil law

[697] Sp. Postumius, A. Manlius (Lydus, I. 31, calls him Marcius, which is a mistake), and P. (or Serv.) Sulpicius. Dionysius says, that triremes were equipt for them: in later times at least it was usual for every embassador to have one to himself.

after any forein model: whereas the model of a state in which the commonalty and the houses had been united into one nation by a complete equality of privileges, was very instructive to the Romans, as they were then circumstanced. Examples of every modification of the relations between political classes, from the effete continuance of the most antiquated forms, down to their absolute disappearance, were furnisht by Greek cities far and near. Several held forth a warning, shewing how the tenacity of oligarchies had unavoidably led to the elevation of a usurper, and thereby to the overthrow of all the privileges of the ancient citizens, even where they might otherwise have been reconcilable with the public welfare. But Athens afforded the example which Rome needed, together with a spectacle of all the blessings that had attended it. It is a mistake, but a pardonable one, in our historians to talk of the laws of Solon: these did not contain what the Romans wanted: they took their lesson from the later legislation. I have already observed that at Athens, as at Rome, the *demus* was in fact a commonalty. It consisted of the old inhabitants of Attica: and as the division into the four Ionian tribes could only affect the ruling nation, who composed the 360 houses contained in those tribes, so assuredly the local division into demes originally related only to the commonalty. Such demes combined into districts according to their situation: we read of the men of the highlands, the lowlands*, and the coast, that is, a division into three parts, such as occurs in the local distribution of Rhodes and elsewhere[698]. It is the predominating one in the constitution of the Greek states: in Attica it was probably a relic of the time prior to the Ionian conquest. Such distinct portions of a country will frequently be at enmity, and commonly without any rational ground; those

* These names were used for local parties in the Grisons.

698 Vol. I. p. 299.

of Attica attacht themselves to powerful eupatrids, who put themselves at their head. This demus, to which Solon had conceded only so much authority in the state as could not be withheld from it[700], while he secured its personal freedom and relieved its distress, was of course excluded from the council, which in all ages was composed of representatives of the tribes, as long as there were no other than the four Ionian ones. So was it unquestionably from all high offices. By his constitution of the classes he removed all the indigent eupatrids from the government, without letting in the rich members of the demus[1]. That Clisthenes instituted the ten tribes seems to admit of no doubt. But a question may very well be raised, whether the abolition of the four Ionian tribes, and the elevation of the others into an order embracing the whole nation, can be attributed to him with equal justice? or whether, like Servius Tullius, he merely transformed the demus, which before was only an aggregate of parts put together at random, after it had been enlarged by the accession of new cantons like Salamis, and by the admission of a number of metics and erarians[2], into a uniformly organized community, and set it up by the side of the old tribes? and whether it was not subsequently, in that interval, of which no information remains, but during which Athens developt itself with such prodigious rapidity, that the two orders united into one body, and the ten tribes became a division embracing the whole nation, while the Ionian tribes were abolisht, and the phratries thrown open to every citizen? The latter is my own opinion. For in the first place it is at the least

[700] *Δήμῳ μὲν γὰρ ἔδωκα τόσον κράτος ὅσσον ἐπαρκεῖν.*

[1] Vol. I. note 1017.

[2] Aristotle says that Clisthenes enrolled a number of metics in the tribes (Polit. III. 2: *πολλοὺς ἐφυλέτευσε ξένους μετοίκους καὶ δούλους*: this is the true reading, not *ξ. κ. δ. μ.*); it looks as if subjects belonging to the class of sympolitans were here spoken of as though they had been *ἰσοτελεῖς*.

exceedingly improbable that an order, which had been kept so much in the background, should have gained the highest franchise at one stride without a struggle; just as the Irish Catholics could not possibly be emancipated fifty years ago: next, even so late as the time of Aristides, none but members of the houses were eligible to the archonship*: and finally, there is no reason to doubt the statement that by the regulation of Clisthenes each tribe contained ten demes, any more than that in aftertimes there were 174 demes in the Attic nation[703]. Some of the additional seventy-four must have been cantons, which had previously been left in a state of dependence: but by far the chief part were houses, the names of which occur in great numbers among the demes of the ten tribes, mixt up with the rest like bodies of the same kind[4]. Be this however as it may, the union of the Athenians and Atticans into one nation took place a considerable time before the decemvirate, the first year of which fell about thirteen years before the Peloponnesian war. If any one questions that the power and splendour of Athens, which were then at their zenith in the age of Pericles, can have been known and objects of admiration on the Tiber, he must be blind even to the external evidence of the commerce between the western coast of Italy and Attica, which has been brought to light within these few years; but which was not needed to convince a person taking an unprejudiced view of the subject. The remains of ancient theatres and works of art prove that Latium and the Tuscans were acquainted with Greek poetry. Why then should not men verst in story have related there, as well as at

* Plutarch, Aristid. c. 1. See Vol. I. note 1017.

703 Herodotus, V. 69. Strabo, IX. p. 396. c.

4 See Vol. I. note 968. The ἄστυ cannot possibly have been a deme, any more than there was a Capitoline tribe: in both instances none but members of the houses resided in the citadel, by the side of the temples.

Thurii, that Athens, after being distracted by factions and having fallen in strength, had been restored to power and dignity by the sway of Pisistratus, but that a new life had sprung up with the freedom created by Clisthenes[705]? a life to which the city owed its wonderful revival in all the freshness of youth after its destruction by the Persians. If the current of democracy was now flowing too impetuously at Athens, and had already swept away some wholesome barriers, even this was a warning, not to persist obstinately in damming it up, but to direct its course while there was yet time.

Perhaps it may have been the Ephesian Hermodorus who directed the Romans where to look for a model of salutary laws; that friend of the sage Heraclitus, to whom the general voice gave the epithet of *the excellent;* which led his fellow-citizens to say: *let none of us be excellent: if there be any, let him be so for others and elsewhere*[6]. The tradition that he assisted the decemvirs in framing their laws seems well-founded[7]: and it can have been

[705] Herodotus, v. 78. The Athenians had Tyrrhenian auxiliaries in Sicily: Thucydides, VII. 57: and even before this expedition the Carthaginians had eyed them with anxiety and suspicion: VI. 34.

[6] Ἡμέων μηδεὶς ὀνήϊστος ἔστω. A well-known story, told by Diogenes Laertius, IX. 2, and by Cicero, Tusc. Quaest. V. 36 (105). Statements of a philosopher's ἀκμή in Diogenes and writers of the same stamp are of so little weight, that the one which places the Ephesian philosopher about Ol. 69, need not prevent us from supposing that the Hermodorus of the decemvirs, though sixty years after, was the same person.

[7] Pomponius, l. 2. D. § 4. de orig. juris (I. 2): Leges XII. tabularum quarum ferendarum auctorem fuisse Decemviris Hermodorum quendam Ephesium, exulantem in Italia, quidam retulerunt. Pomponius compiled his works from Gaius, who had Gracchanus before his eyes. Pliny, XXXIV. 11: Fuit et (statua) Hermodori Ephesii in comitio, legum quas Decemviri scribebant interpretis. It looks as if Pliny in his hurry had fancied at the moment that Hermodorus, to do honour to Rome, had translated her laws into Greek: his author however must have meant that he translated Greek laws for the use of the decemvirs. Cicero, if he knew the story, cannot have believed

no common service that procured a stranger the honour of a statue in the comitium[708]. If however he had any share in the Twelve Tables, it can only have related to the constitution.

it; or he certainly would not have omitted it in the passage quoted above: nowhere does he give the least hint that there was any Greek element in the Twelve Tables.

[708] It Pliny's days it was no longer to be seen: it was probably taken away in the time of Sylla, along with those of Pythagoras and Alcibiades.

THE FIRST DECEMVIRS, AND THEIR LAWS.

When the envoys had executed their commission[709], a delay nevertheless took place in the appointment of the lawgivers: nor would the point have been settled peacefully, had not the plebeians given up their original demand that the board should be composed of both orders. The arrangement agreed to by the ruling order was, that the consulship should be suspended, and that in the mean while ten senators, like a college of interrexes, should be invested with consular, and at the same time with legislative power[10]. Among the ten appointed by virtue of this agreement we find both the consuls of the year 302: and as these were indemnified for the dignity they were forced to resign[11], so it is probable that the questors of blood and the warden of the city, whose offices were likewise transferred to the decemvirate[12], obtained seats in it. Thus the patricians would have

[709] If the extract which Lydus (I. 34) gives from Gaius be faithfully rendered, the latter must have related that the sending out the envoys was the act of the decemvirs.

[10] What Dionysius gives as the substance of the bill of Virginius (x. 3), was probably drawn from the ordinance which preceded this appointment.

[11] Consuls elect (see Livy, III. 33. Dionysius, x. 55) are out of the question here, and indeed for a very long time after: they entered upon their office at this period immediately, or at most a very few days after their election. The Fasti have the correct term, *abdicarunt*.

[12] Dionysius must be speaking of the questors, when he says, *καὶ εἴτινες ἦσαν ἄλλαι πάτριοι ἀρχαί.* x. 56.

four deputies appointed exclusively by themselves, and one whose election they had confirmed; while five places were left open for the free choice of the centuries. Livy must evidently have heard a faint report of an election, by which a certain number were added to others previously appointed[713].

The patricians were the more determined to allow the plebeians no share in this decemvirate, because it was understood as of course, that it was not only to draw up a scheme of laws, but to enact them, and to be the sole magistracy of the state. For in the ancient commonwealths, when legislators were appointed, they were always entrusted with the whole government; as was the case with Solon, and with that body which from its actions received the name of the Thirty Tyrants. Plato held that the most perfect manner of introducing new laws is when they are enacted by the power of a single individual. But, as at Rome there were to be more than one, it was clear that the utmost unanimity the case would admit of would be much more easily attained among men belonging to the same order, who had acted for years side by side in the senate, than if the board were composed of those who had hitherto been contending about the rights of their respective orders. Indeed how were such to have come to a decision, their votes being equal, when the determination of these rights was the very matter in debate? It would have been necessary to have an umpire, who must have been chosen out of one of the two orders: for this office could not possibly be assigned to Hermodorus. The plebeians might still hope for a fair scheme, as six of the decemvirs were men of their choice[14]. Besides it is not improbable that among the patricians at this time there may have been symptoms of a temper such as dictated the instructions which most of

[713] III. 33: Graves aetate novissimis suffragiis electos ferunt.

[14] Including one of the consuls.

the deputies of the nobless carried with them to the States General in 1789; in which selfishness and obstinate arrogance were silenced by the prevailing readiness to accede to whatever was fair, as matter of grace at least, if not of justice. The principle that the two orders were to be placed on the same footing was admitted: and should the decemvirs unhappily betray their charge, the centuries had the power of rejecting any objectionable law. All danger might be avoided, and much time saved, if it was agreed that those points, and those alone, on which the present decemvirs did not think themselves able to introduce a general equality of rights, should be reserved for the future deliberation of a mixt board.

In order however that the people should be able to judge of the import and consequences of the propositions they were to decide on, it was indispensable that the tribunes should have the right of haranguing them. Indeed it would have been inconceivably rash in the plebeians to have renounced the tribunate, and trusted to the protection of any decemvir they might appeal to. What was the good of reserving the sacred charters, if their security and their best fruits were to be given up, before the new constitution was settled? With the patrician offices the case was very different, as their holders might be admitted into the decemvirate. I have no doubt that our historians, as they were throughout unable to perceive what a complete distinction there was between the first and second decemvirate, have transferred a provision to the former, which they merely read of in connexion with the latter, or perhaps with the Terentilian bill.

As the first decemvirate represented a decury of interrexes, the supreme power was always lodged with one of their body, who was called the *custos urbis*. He was attended by the lictors, and presided over the senate and the whole republic as warden of the city[715].

[715] Lydus, I. 34. Livy calls him the *praefectus juris*, unless we

The rest, each of whom had merely a beadle at his orders, are said to have acted as judges[716]. There is no imaginable reason why the rotation should have followed any other law than it would have done in a decury of interrexes, where the kingly power remained five days with each: and this conjecture is favoured by Dionysius, who speaks in vague terms of a certain number of days[17]. From its nature as an interreign, their office had no other limit to its duration, than the accomplishment of the commission they had received. Their successors took their seats on the ides of May: a very few years before this, we know that the consular year began with Sextilis: hence it is clear that they must have been in office either for more or less than a year; probably the latter. In a subject which had occupied men's minds so long and so deeply, many preliminary points must already have been settled: and the aim of the decemvirs was not to devise a new code, but merely to make a selection among the clashing provisions of the statutes already existing, and to reconcile them.

The whole period of their magistracy was dedicated to their great task, undisturbed by any interruption from without; while among themselves harmony prevailed;

ought to read *eo die penes praefectum urbis.* The very same thought of appointing a lieutenant to supply the place of a king who no longer existed, occasioned the institution of the Statholder in Holland.

[716] The passage on this subject in Dionysius, x. 57,—*διήτων τὰ ἰδιωτικὰ συμβόλαια καὶ τὰ δημόσια, ὁπόσα τε πρὸς ὑπηκόους καὶ συμμάχους καὶ τοὺς ἐνδοιάστως ἀκροωμένους τῆς πόλεως ἐγκλήματα τυγχάνοι γενόμενα,*—is derived from an account drawn up with a very clear view on the point. For the subjects of Rome they were judges in all causes; for the inhabitants of allied towns and the municipals (between whom a distinction is here drawn), when by the terms of the alliance the cause was to be decided at Rome.

[17] *Εἰς συγκείμενόν τινα ἡμερῶν ἀριθμόν.* Compare Vol. I. p. 340. Livy and Dion (Zonaras, VII. 18) suppose the rotation to have been from day to day: this is certainly erroneous.

although they did not shut their ears to complaints against particular members of their body. They completed the national code, so far as their powers reacht, and publisht it in the form of ten laws, on ten tables, for the information of the people, in order that every one who saw room for any amendment might point it out to them: whereupon, if they agreed with him, they altered the statute accordingly. In no ancient commonwealth do we find any instance where the several clauses of a law, or amendments proposed by another person, were put to the vote: the whole was adopted or rejected in the unity it received from its author[718]. When the decemvirs had satisfied every objection they deemed reasonable, and their work was approved by the senate, they brought it before the centuries, whose assent was ratified by the curies, under the presidency of the colleges of priests, and the sanction of happy auspices[19]. Hereupon the laws were graven on ten tables of brass, and posted in the comitium that all might read them[20].

718 Ever since the time of the Constituent Assembly, the reverse has been the practice on the Continent; and, particularly since the restoration of the Bourbons, not only have alterations suggested by a Committee often given a proposed law a totally contrary tenour,—which is only a slight evil,—but amendments off-hand frequently introduce absurdities and contradictions, after an enormous time has been spent in debating. England, by the political good sense that still prevails there, has been kept free from this strange notion of attaining to a high degree of perfection by means of an aggregate of wisdom. I remember only one instance, where a bill, which originated in the upper House, was amended by sundry officious hands: but it turned out a complete abortion, which the next session committed to the grave. In the very valuable draft of a criminal code discust by the Cortes in 1822, the articles on which amendments were carried, were mostly spoilt.

19 The presidency of the priests is mentioned by Dionysius, x. 57: only here again he erroneously applies it to the centuries. See above, p.223.

20 The ἐπιφανέστατος τῆς ἀγορᾶς τόπος in Dionysius, like the κράτιστον τῆς ἀγορᾶς in other passages, is nothing but the Comitium.

The laws of the decemvirs continued down to the time of the emperors to be the basis of all civil and penal jurisprudence, though almost concealed from view under the enormous edifice that was, in some instances capriciously, piled upon it. Unfortunately the pages containing the account, which Dionysius in his eleventh book gave of their peculiar character, are lost; and little information is conveyed by the scanty fragments that have accidentally been preserved. I shall refrain therefore from all notice or investigation of their contents, except so far as their provisions immediately concerned political rights and the constitution, or had an important influence on the classification and mutual relations of the citizens.

For the purpose of uniting the houses and the commonalty into one civic community, it was requisite that there should be a division of the nation which should comprehend them both. Now the tribes of the houses could not take in the plebeians: but the local tribes might very well receive the patricians. As early as in 321 we find that the censors, whom Mam. Aemilius had offended, struck his name off the roll of his tribe: which cannot have been his old patrician one, even supposing this had still been subsisting, since no human power could dissolve the bond by which his birth connected him with the tribe containing his house. Moreover he was removed from his tribe into the class of the erarians, as was the case with every plebeian who lost his rank[721]. In 362, it is related, the patricians went about, each conjuring his fellow-tribesmen to vote against settling at Veii[22]: and this statement seems to deserve full credit:

The notion of ivory tables (*eboreae*, not *roboreae* by any means) in Pomponius, § 4 (n. I. 2), is in the spirit of an age which could form no conception of anything important, without show and costliness in the materials: it was probably suggested immediately by the ivory diptychs.

[721] Livy, IV. 24.

[22] Dissipati per tribus, suos quisque tribules prensantes. Livy, V. 30.

though the story that Camillus vainly attempted to prevail on his to acquit him, has nothing to rest on but a doubtful reading in the common text of Livy[723]. We are not to regard it therefore as an effect of the great changes brought about in the fifth century, when we find that Julius Caesar belonged to the Fabian tribe, Ser. Sulpicius to the Lemonian; and that in 544 the censor C. Claudius, as the member of a tribe, was affected by the condemnation pronounced by M. Livius in general terms on all but one[24]. The ground of this change must not be assigned to a later period than the decemvirate. This is clear, were it only from the claim of the patricians to be eligible to the tribuneship after its reestablishment: which could never have entered into any one's thoughts, until that office was held to represent the whole nation. In this measure the decemvirs followed the precedent of Athens. A similar one was adopted half a century after in Elis, when the three tribes of the close oligarchy under which even the district beneath the city-walls was in a state of dependence, were done away, and the whole country was divided into twelve local tribes[25]. Indeed a like change must always have taken place whenever a Greek state got rid of its oligarchy. It was in spirit the same thing, though with the colour and the features of a different epoch, when the houses in the middle ages were received into the guilds, and these determined the form of the constitution. Such was the case at Florence, where all the old citizens, though no way connected with the trades, were enrolled in the guilds

[723] v. 32. The Florentine manuscript, instead of *tribulibus clientibusque, magna pars plebis erat*, reads *tribulibus eo clientibus quae, m. p. pl. e:* if *eo*, of which nothing can be made, be struck out, the passage will speak of clients who were *tribules*, and composed a great part of the plebs; a reading which is exceedingly tempting; though it must not be overlookt that in the oldest manuscripts *que* is very often written *quae*.

[24] Livy, XXIX. 57.

[25] Pausanias, v. 9. 5. See Vol. I. n. 975.

along with the members of the commonalty, with the exception of those who by the Order of Justice, as it was called, were excluded from office and from the government, because they had shewn themselves the incorrigible enemies of legal order. But here the opposite course was also taken: the plebeian guilds were admitted into the quarters and banners into which the houses were divided; so that every full freeman belonged both to a guild and a banner[726], the excluded houses to one of the latter at the least. This regulation corresponds to what must have happened among the Greeks, in those states where the phratries were entirely detacht from the constitution of the houses; and even at Athens, where their connexion with the extinct tribes was only a matter of memory, and where the having phrators was a distinction not of a eupatrid alone, but of every genuine Athenian.

At Rome indeed the innovation for the present was not carried nearly so far. Men of sense, who were aware of the good of a mixt constitution, cannot even have wisht that the patricians, who were considerable enough to maintain their existence as a separate order, should be swallowed up without any distinction in the general mass of the citizens. The lawgivers had still to introduce equality into the body of the old citizens themselves. The statement that Appius in the second decemvirate took the votes in the senate in the order he thought fit, without regard to old or young[27], though it

[726] Varchi, Storia Fiorentina, III. p.66. With regard to the original nature of the *quartieri* and *bandiere* information must not be sought from this author: to a writer of the 16th century the constitution previous to the guild-government was totally unintelligible. I will observe by the way, that the *sopportanti non statuali* at Florence (who paid the *decima*, but took no share in the government) corresponded to the erarians.

[27] Dionysius, XI. 16: Οἱ περὶ τὸν Ἄππιον ἐβουλεύσαντο μηκέτι καθ' ἡλικίαν καὶ βουλῆς ἀξίωσιν συμβούλους καλεῖν, ἀλλὰ κατ

is tinged with the mistake which prevails throughout on this subject, still unquestionably is one of those which preserve the remembrance of an innovation then first introduced; that is to say, the putting an end to the inferiority of the lesser houses in the senate. For some time after distinctions have been legally abolisht, they are commonly kept up by personal feelings and habits: and so in the first years after the decemvirate we still hear some lingering allusions to the younger houses; but ere long they die completely away. There can be no doubt that, after the time of the decemvirate, all patricians indiscriminately were eligible to every office in the state, and even to the sacerdotal dignities; though the colleges of priests were not enlarged.

The curies, though their nature was materially altered, continued to subsist. But the three ancient tribes are no longer mentioned, except as an obsolete institution. They must have been abolisht, like the Ionian tribes at Athens, the curies of which likewise survived them. They could not conveniently be kept on foot alongside of the general tribes of all the citizens: and their abolition at Rome became necessary on this further ground, that they at least obstructed the transformation of the patricians into a body in which all were to be equal. When they had been set aside, the order in which the thirty curies were to be called up to vote would be determined by lot.

An innovation of incomparably greater moment through its consequences, which certainly were not anticipated, was that all who were erarians at the time were enrolled in the tribes, as at least a great number of pale-burgesses and metics had been by Clisthenes. That this was a

οἰκειότητα καὶ τὴν πρὸς αὐτοὺς ἑταιρίαν. The ἡλικία is here trans ferred to individuals, by the usual mistake about the age of the houses. The measure was recorded in the form of a proceeding that took place on the first important meeting of the senate: the motive assigned is of later invention; though even this may perhaps come from an old annalist.

measure of the decemvirs might be inferred from the design of their legislation, and from the institution of general tribes: and on comparing the plebs on its reappearance after the decemvirate with its previous character, we see clearly that the body bearing this name is no longer the old one of hereditary land-owners, but has been altered by the infusion of forein elements. Since the passing of the Publilian law the tribunes had stood for one man. But after their restoration, as during the time when they were elected by the centuries, we frequently find a party among them devoted to the patricians, and stopping the bills of their collegues by a veto: and even when this is not the case, measures which an independent assembly, like that of the tribes before the decemvirate, would have caught at with eagerness as urgently needed, are not uncommonly rejected by a majority. Hence there is no further occasion for scenes of violence in the forum; and they no longer occur. The clients too, who in earlier times are distinguisht from the plebeians, are now reckoned among them, and make up a large part of the tribes[728]. A great number of freedmen of the patricians, and of the descendants of such, must have been admitted at this time. For, though Appius the censor enrolled them in a body, this does not prove that they had never been let into the tribes before[29], but only that the practice had been discontinued for a very long period, perhaps for half a century. And as I have conjectured that at Athens several sympolitan townships were incorporated in the tribes, so most certainly were the ancient colonies at Rome. For they are never more heard of as such, though their contingents are mentioned a short time before in the war with Veii[30]. The commonalties of these towns most

[728] Livy, VI. 8: Quot clientes circa singulos fuistis patronos. See also the passage quoted in note 723.

[29] Plutarch, Publicol. c. 7.

[30] See notes 75, 449.

probably stood in the relation of clients to the families which bore a *cognomen* derived from them[731]. To unite all these, the numerous *inquilini*, the freedmen,—a class consisting not of purchast slaves of a savage or ignoble race, like the Getes, Phrygians, and Syrians at Athens, but of Italians of a kindred stock, who had only been deprived of freedom by the chance of war, and who during their servitude ate at their master's table, and workt in the field at his side,—and their descendants, a class in which Horace was to be born,—to unite all these with the nation was a measure no less politic than equitable. For the pestilences must have exceedingly thinned the ranks of the order, which alone was bound to serve in the legions. Moreover we find unequivocal traces that more numerous armies were sent into the field after the decemvirate than before.

It was the more reasonable that this duty should be imposed on the erarians, who had hitherto been exempt from it, because the centuries, in which they already had votes, were invested with larger powers. The Twelve Tables transferred the trial of capital offenses to them, as the general national assembly[32]. The lawbooks recorded the first example in which a charge came before them[33]: but it was misinterpreted by later writers, as one of the instances in which the consular power was narrowed. It needs no proof, that this jurisdiction, so far as the patricians were concerned, had hitherto been

[731] See p. 243. note 553.

[32] Cicero, de legg. III. 4. 19 (11. 44).

[33] The decemvir C. Julius summoned a patrician, L. (not P.) Sextius, before the people, because a corpse had been found interred in his chamber: Cicero, de re p. II. 36, and Livy, III. 33, whose text must be corrected accordingly. There may have been no room to doubt the crime: but, as the case is related, it was not a *delictum manifestum*, on which the magistrate might give judgement upon clear evidence. It was necessary that a court should decide whether the culprit was guilty or not.

exercised by the curies. In conformity to the change in the court, the questors of blood are henceforth elected by the centuries.

But in assigning this jurisdiction to the centuries the Twelve Tables did not deprive the pretorian magistracy of the power of punishing a definite and notorious crime even with death. The inhibition relates only to the curies, and to those cases which among the ancients came before the popular courts; those in which the guilt of the accused could not be determined and measured by any particular law. Not that the plebeian tribes had not hitherto possest the same jurisdiction over their own order, or that they still retained it. But the law paid no regard to them, because they had ceast to exist, and their order was dissolved. Indeed even supposing that, as was the case after the decemvirate, the whole body of the non-patrician citizens had been intended to take the place of the former plebs, who was to transact business with it, after the tribunate was abolisht? For that this was done, formally and expressly, could not be doubted, even if Cicero's very harshly worded testimony were less distinct than it is[734]. The legislation would otherwise have failed of its design, and have contradicted itself.

For unquestionably the footing on which this power stood with regard to the supreme authority and the unity of the state, was like that in which the Huguenots were placed by the possession of the securities indispensable against their faithless adversaries: and it could not but appear that the existence of such a disturbing force could only be justified by the necessity of securing the personal freedom of one part of the nation; while the other had the government wholly in its hands, and was constantly yielding to the temptation of abusing its superiority of power. This motive however seemed completely

[734] De legg. III. 8 (19): Cum esset cito ablegatus, tanquam ex XII tabulis insignis ad deformitatem puer.

removed, provided that the supreme magistracy was shared between the two orders; all the Romans being now united into one civic body, in which the patricians assumed the form of a very numerous nobility. By such a measure the plebeian nobless would have attained the object it was evidently striving after when it desired an alteration in the consulship. The people hoped for the same protection from its chiefs, which it had received from the tribunes: and as the collegues of the patricians, they might even have the power to prevent the commission of wrong. If vanity felt mortified at the thought of seeing the members of a different order, on whom it had hitherto lookt down as born to be its subjects, placed in the highest dignities by its side, still no experienced statesman could fail to perceive, that in reality the dominion of the patricians would be better secured, if the supreme power was entrusted to a numerous board, made up half of plebeians, than under exclusively patrician consuls, with tribunes and their feverish assemblies to oppose them. One of these alternatives however it was necessary to choose, if indeed any choice was left, and it was any longer possible to hinder the plebeians from obtaining a share in the government.

This was distinctly perceived by the authors whom Dionysius had before him, when he wrote, that after the first year the prospect of getting rid of the tribuneship determined the senators to wish for the decemvirate: and assuredly all the annalists saw with equal clearness that half of the second decemviral board did actually consist of plebeians. Three, Dionysius expressly says, were of that order: and so unquestionably were the two others, whom he calls men of low condition[735]. In both our

[735] Ἄνδρες οὐ πάνυ ἐπιφανεῖς: x. 58. A Rabuleius appears as tribune of the people 35 years earlier: Dionysius, VIII. 72. Should it be urged with regard to Antonius Merenda, that a person of the same name was consular tribune in the year 333, and that nevertheless Livy says that P. Licinius in 355 was the first plebeian elected

historians the names of these five stand together after the patricians. It is true, they both of them consider this college, like the first, as merely an extraordinary committee appointed to finish the legislation, and do not see that this task was entrusted to them only along with the duties of an ordinary magistracy, and that the institution of their office carried the Terentilian bill for the better ordering of the consular authority into full effect. Still we are not without testimony recognizing the true state of the case. Livy, whose contradictions proceed from his following different annalists in different passages, begins his account of the decemvirate by comparing the change then introduced to the transition from the monarchy to the consulship, adding that it was less celebrated only because it did not last, as its flourishing commencement soon grew rank and wild[736]. His oversight, in speaking of the office substituted for the consulship a year too soon, is of no consequence. In another passage a consul reproves the fickleness of the plebeians, and extolls the pliancy of the patricians. *You wanted decemvirs; we let them be elected: you grew tired of them; we made them abdicate*[37]. Should these testimonies be unreasonably rejected, as the bare opinion of the historian, nothing at all events can be more authentic than the law by which L. Valerius and M. Horatius secured the inviolability of the plebeian magistrates. In this the decemvirs were placed under the same protection with the tribunes, ediles, and judges. Nor can these

to that office, it is sufficient criterion of his authority in this case, that he represents Licinius as the only plebeian among the six collegues, whereas on the contrary there was but a single patrician in the whole college. The year 333 falls in a period of violent commotions, when the patricians were either too weak to hinder the exercise of the eligibility that had been allowed to the plebeians, or deemed such interference too hazardous: they had to make still greater concessions.

736 III. 33. 37 III. 67.

decemvirs have been the judicial tribunal of that name; for that was not instituted till the fifth century[738]. Beyond all doubt they were the supreme magistrates, who were again to take the place of the consuls, as soon as it should be settled what share the commonalty ought to have in the curule dignities, now that the tribuneship was restored. This was well known to those who held that the inviolability of the consuls and pretors was secured by that law. They justly applied the guarantee, given to these offices under a different form of the constitution, to those who filled them in the form finally establisht: and they who reasoned thus were no way refuted by the argument that the consuls were not termed judges[39]. Moreover it is evident from the same law, that the participation of the plebeians in the supreme magistracy was recognized as a matter of necessity: for none but the decemvirs of their order are protected by it; since they are named after the plebeian offices already existing, and the penalty is to go to the temple of Ceres. Not that the patrician decemvirs were left open to outrage: but their inviolability was already ensured by the ancient privileges enjoyed by all inaugurated patrician magistrates.

Now from the year 311 forward, supposing that the military tribunes had been chosen, in the manner which Dionysius says was ordained, three from each order[40], the highest offices in the republic would exactly have been divided among a body of ten. For there were the two censors; and after 307 the two questors of blood were appointed by the centuries. This statement indeed about the division of the tribuneship between the two

738 Livy, III. 55: Qui tribunis plebis, aedilibus, judicibus, decemviris nocuisset, ejus caput Jovi sacrum esset, familia ad aedem Cereris Liberi Liberaeque venum iret.

39 Livy, III. 55. It has been shewn, in Vol. I. p. 428, that the *judices* here are the centumvirs.

40 XI. 60.

orders seems at first sight quite preposterous. According to our historians, the regulation would never have been observed, except once in 376: and in the very election, on occasion of which it was enacted, on the motion of C. Claudius, not six, but three were chosen; and these were all of the same order. For this very reason however no writer could ever have been led to fabricate it: but an over-hasty one might easily omit a part of what was stated in the Annals, namely, that it was only under this modification of the law that the patricians consented to let consular tribunes be elected along with the censors. The arrangement mentioned by Dionysius naturally suggested itself. Three patricians took the place of the three *tribuni celerum*, who ceast to exist when the tribes were abolisht; and the same number of plebeians were associated with them. A dim notion, that in one of the magistracies which made up the decemvirate there were three plebeians, may perhaps have occasioned the errour of Dionysius, that there were no more in the whole body. If we next inquire what were the offices of the other two pairs, we find that Ap. Claudius and Sp. Oppius are expressly said to have staid at home to take care of the city. Hence it is plain, without any explanation, that they acted as civic pretors, and presided over the senate and the assemblies of the people, as well as the tribunals. But their duties were not confined to this. They must also have comprised those of the censorship, an office which arose at the same time with the military tribuneship out of the dissolution of the decemvirate, and then, as will be observed when we come to it, combined the duties of the pretorship with its own. Hence Appius Claudius is recorded to have been the first censor[741]. Our historians found no occasion to mention the questors, as they did the former pair. But the Annals tacitly pointed them out, in giving

[741] Lydus, I. 43: Πρῶτος Ἄππιος Κλαύδιος κήνσωρ προεβλήθη.

the names of the military tribunes who commanded against the Sabines and the Aequians. In the war against the former we find three, one patrician and two plebeians: which leads us to suppose that the other army would be headed by two patricians and one plebeian. Livy however, after enumerating these in this order, adds the names of another plebeian and patrician[742]. That is to say, two being related to have staid behind as civic pretors, it was inferred that all the rest must have taken the field. With much better reason may we conclude that M. Sergius and K. Duilius were the two questors of blood, the precursors of the curule ediles; in like manner as Appius and Sp. Oppius were those of the censors and pretors, into which offices theirs was subsequently split[43].

[742] Livy, III. 41: Huic (Fabio) bellum in Sabinis, M' Rabuleio et Q. Poetelio additis collegis, mandatum. M. Cornelius in Algidum missus cum L. Minucio et T. Antonio, et Caesone Duilio et M. Sergio: Sp. Oppium Ap. Claudio adjutorem ad urbem tuendam decernunt. Dionysius, (XI. 23), in giving the names of these five, mentions the patricians first, then the two plebeians. To account for this larger number, they are said to have had five legions, and the army against the Sabines three; that is, the Romans had 24000 men in the field, besides the light troops, and an equal number of confederates: an exaggeration which betrays the groundlessness of the whole statement. Moreover, that each decemvir may have his legion, two are made to stay behind in the city, and these of the *juniores:* a piece of ignorance which shews how late this fable was hatcht. In the old tradition here again the reserve consisted of one legion of veterans (see notes 775, 776): consequently only two legions went into the field, each under three military tribunes.

[43] Flaminio Vacca relates, that one side of the Lateran Hospital, which was built in the twelfth century, the midnight of barbarism at Rome, was walled with fragments of statues, many of which were evidently of the finest Greek workmanship. In several nothing can have been perceptible but that they were of Parian marble, and had once issued from the hand of the statuary: here we get a complete image of the accounts that Lydus extracts from Gaius. He tells us (I. 34) that the decemvirs were entitled *glebae,* because the possessors of fruitful fields defrayed the charge of their maintenance. This

By this partition of the consular power between the censors or pretors,—by whichever name we choose to call them,— and the military tribunes, whose authority was undoubtedly confined to the command of the army, and had nothing to do with the administration of justice, the design of the Terentilian bill was in great measure attained. For the creating of a greater number of officers took away the personal kingly dignity of the consuls; which during the first decemvirate subsisted along with their power in its full extent; in the person of the warden of the city for the time being. What completely mitigated that formidable power however, was the uniting these two branches of the government with the office of the questors of blood, who had no share in it, in one supreme board, from every member of which protection might be claimed: just as it had been hitherto from the tribunes, whose office could not otherwise have been deemed dispensable. Experience proved that the substitute was not sufficient. Hence it was not thought necessary to reunite the offices in one board, when they were reestablisht in a somewhat different form, after the tribuneship had been restored to the plebeians; although the design of the consuls Valerius and Horatius was, that the decemviral government should subsist along with the tribunate.

This combination of offices entirely different from each other to form the supreme magistracy in a state is an institution so contrary to usage, that, as we find a more ancient instance thereof, we may well consider it to have served as a model. This instance, perhaps the only one concerning which any precise information has reacht us, is afforded by the college of the nine Archons at Athens: in which the main feature of resemblance to the decemvirate is not the less markt, though the several offices

sounds extremely absurd: yet there must be something at the bottom of it. Was it a statement that the public arable land was subjected to a tax?

do not answer to the Roman. Still less is it a reason for rejecting this comparison, that, so far as the Attic constitution is known from contemporary authors, all these offices were little more than names without a substance, at least magistracies without any independent authority. I repeat, that in constitutions nothing ever begins as a shadow. Of the three offices which issued from that of the ancient kings, the polemarch had a substantial charge so late as the battle of Marathon. Nor can that of the archon have been without great power, at the time when Solon was invested with it to frame a code of laws, and when the Pisistratids assumed it as a stay for their dominion. At that period it undoubtedly included the right of presiding and propounding all measures in the senate, which nothing but the efforts of the demagogues to weaken the government can have transferred to the prytanies. That this institution was of a later age, is betrayed by the disproportion between the numbers of the members and their days of office. It is most probable too that *prytanis* was the ancient name for the archon eponymus. The same efforts prevented the στρατηγοὶ from being rankt among the archons: whereas at Rome it was agreed on all hands that the government ought to be strong. But though the decemvirate was not, and could not be, a counterpart to the college of archons, still it is exceedingly probable that the report of the envoys, how the kingly power had been resolved into that college, guided the Romans in uniting their great offices together.

So too the law, which had undoubtedly been in force for centuries at Athens, by virtue of which the nine archons, after completing their year of office, became members of the council of Areopagus, may have suggested the corresponding regulation of Rome with regard to all such as had filled curule offices, even down to the financial questors. So long as the senate represented, first the houses and then the curies, this rule could not

be applied. But soon after the election of the fist plebeian questors we find a senator also of the same order: and the plebeians who sat in the decemvirate cannot afterward have been debarred from a place in the senate. If five ex-decemvirs however were admitted every year, even supposing that the free choice of the censors, which was now to be exercised in part by plebeians, never called up a member of the second order to a vacant place, still at the end of a generation, if the natural course of things was not greatly thwarted by frequent reelections or an extraordinary mortality, at least a third of the senate would have consisted of plebeians. To prevent this there was an obvious remedy, which the decemvirs cannot have overlookt; namely, to make their office last for more than a year. This plan was further recommended by the reflexion, which it certainly was not reserved for the statecraft of modern times to discover, that to keep down the buoyant spirit of a free people, elections should be rare. To keep down this spirit was the very object the decemvirs had in view; as it was that of those who prolonged the duration of the elective branch of the legislature in England and France to seven years: and since the censorship, which was held for five years, was a branch of the decemvirate, we are naturally led to conjecture that all the officers in it were appointed for the same period; whereby the number of new senators called up as of right would be reduced to a fifth. This precise term is indeed hypothetical. It is quite certain however that the decemvirs were appointed for a longer period than a year; though the writers who had no notion of any but annual magistracies, represent their retaining their office beyond this term as a usurpation. Had it been so, it would not have been provided in the compact with the ancient commonalty that the decemvirs were to lay down their office as soon as possible[744]:

[744] Livy, III. 54: Factum senatusconsultum ut se decemviri primo quoque tempore magistratu abdicarent.

for this expressly acknowledges that they had a legal right to continue in it. If they had usurpt their power, interrexes would immediately have stept into their place; and by the Valerian law their lives would have been forfeit, and all further impeachments superfluous[745].

As the supreme authority and the great offices of state were divided equally, or at least for a first step fairly between the two orders, so a number of traces shew that the same equality was extended to the civil condition of individuals. It was even establisht between the pledged and the redeemed, between the *sanas* and the *fortis;* terms which puzzled the ancient jurists and grammarians, but probably to be understood either of bondmen and freemen, or of those who had hitherto been vassals in the ancient colonial towns, and the colonists[46]. Where we know the penalties enacted, we find no distinction made, except in the case of slaves and boys. Every one now becomes liable to imprisonment in the gaol: Appius the decemvir was placed in personal confinement by virtue of his own laws[47]. From this time forward, there is evidently a perfectly free *commercium* between the two orders. The *mancipatio*, in its manifold applications, the *usucapio*, to supply its place, the *vindicatio*, and all other legal remedies, are part of the law of the whole nation. This equality however was not without exceptions. The pledging of the person was retained, and, like the whole system of servitude for debt, exclusively affected the plebeians[48]. The law of debt, the

[745] To bar this objection, the decemvirs are furnisht with the pretext (as if in such a case an empty pretext would have screened them) that they had been appointed for an indefinite period for the business of legislation; and since even this was completed by the last two Tables, it was represented that as yet these had only been proposed: for which reason Diodorus (XII. 26) ascribes them to the consuls L. Valerius and M. Horatius.

[46] Nexo solutoque, forti sanatique idem jus esto. Fest. Epitome, Sanates.

[47] Livy, III. 56 foll.

[48] Vol. I. p. 573.

cruelty of which struck later generations with horrour, cannot have belonged to the code of the first decemvirs, which is extolled for its justice[749]. It must have been contained in the last two Tables, the laws of which Cicero calls unjust[50], especially that which allowed of no intermarriages between the orders[51]. The plebeians continued excluded from the enjoyment of the public lands. It can only have been disparaging provisions of this kind that led Cicero to condemn them. These enactments are surprising at first sight, since half the authors of them belonged to the order, which they appeared to oppress and degrade. Yet they may be satisfactorily accounted for; since it follows from the nature of the case, that the first decemvirs, from their commission, would only legislate on subjects in which the whole community was to be placed on a level. It is conceivable that the mixt board may have deemed the inequality or harshness of the law, in many cases where it shockt a later age, which was not affected by it, neither avoidable, nor really hurtful, under the circumstances of the times; or that at least they may have considered it less of an evil. Indeed it probably was so; since those tables remained in full force so long after, with the exception of the change made by the Canuleian law. Later writers were deceived by the notion that the laws in question were newly

[749] Cicero, de re p. II. 36: Summa legum aequitate et prudentia. These laws must at all events have included that which forbad *privilegia*, an obscure subject: for the ban laid on a culprit who had made choice of exile would fall under Cicero's definition. Unless he was altogether on a wrong sent, we should be led to think of the banishment of such citizens as were objects of dread or envy, without any specific offense laid to their charge; a kind of ostracism and petalism; modes of proceeding which were revived in the Italian cities during the middle ages.

[50] Cicero, de re p. II. 37. Duabus tabulis iniquarum legum additis. The exaggeration is obvious: it is impossible that even the greater part of them should have been of such a nature.

[51] Cicero, de re p. II. 37. Dionysius, x. 60.

devised: whereas the fact is, that those already in being were not abolisht. It cannot indeed be positively asserted, that the plebeian decemvirs were influenced by such worthy motives. Their cooperation however produced the appearance of a free assent on the part of the non-patrician members, even if one was gained over; since all questions were decided by a majority: or without much difficulty all five might be overpowered. Of course the patrician decemvirs, as their names are placed first in the lists, stood at least in the same relation to the plebeians, as the consul chosen by the curies to his collegue. The equality of the new men to those who had already filled high stations and counted ancestral images, could not be enforced, when the publicity, by which they might have gained strength, was taken away. The contrary expectation, which many had harboured from vanity or good-nature, and which others had wittingly and designedly cherisht in them, was very soon to be destroyed; together with all the hopes founded on the theoretically perfect and nicely balanced new constitution.

THE SECOND DECEMVIRATE.

The election of the magistrates, under whose hands what as yet was only a written law, was to begin to become a living one,—a law which was to gain strength with age, until it amalgamated with the nature of the whole people born under it, no less than their language and manners, and which then, unless continually moulded to suit the changes in the state of things, was to die away and lose its hold,—this election was perfectly free. After a revolution like this, it very frequently happens that its strongest adversaries procure seats in the government, in order to subvert the constitution[752]. This must have been the design with which the leading patricians now exerted their whole influence over the centuries, to carry the election of L. Cincinnatus, C. Claudius, and T. Quinctius. What the aim of these men would be, nobody could doubt. One of them, we know, had wisht to cancel the charter of the Sacred Mount; the second took measures a few years after for effecting a counter-revolution by a massacre; and the third tried to check the development of the new constitution at a moment the most favorable for it[53]. He had formerly been one of those in whom the people placed confidence, but had changed his sentiments. Appius on the contrary, from

[752] Such was the case in France in the years 1795 and 1797; in Spain in 1813.

[53] Livy, III. 35. 66, and foll. IV. 6.

the moment that the reform was irrevocably decided on, had loudly declared himself in its favour; and he past for the soul of the whole decemviral legislation[754]. The people,—for at present that the name of citizen belongs to all the Romans, it is not improper to apply this term to that body, which now stands in opposition to the patricians,—saw no guarantee for the lasting of the constitution, except in its being confided to him, and to those

[754] It was long ago observed with surprise, that the Fasti described this Appius as *Ap. f. M. n.*, whereas Livy manifestly considers him as a son of the consul of 283, and a grandson of the first Appius. Still more singular is it, that one of the fragments discovered in 1817 completes the record of his consulship in the following manner; *Ap. Claudius Ap. f. M. n. Crassin. Regill. Sabin.* II., from which it is clear that the author must have taken him for the same person, whom Livy has led us to look upon as his father. It is certainly remarkable, not so much in itself, as on account of that practice of the annalists which we have already had frequent occasion to notice, that an Appius is twice said to have committed suicide, which is of so exceedingly rare occurrence in the early ages of Rome: and assuredly it is not impossible that the story of the punishment which followed the consulship of 283, may have been the invention of some oversubtile writer, who took this method of extricating himself from the difficulty of conceiving how the commonalty could ever have bestowed confidence on the author of that massacre. But above all, the tragic story of Virginia was a motive to fancy the decemvir a young man. Yet Tiberius and Ali Pacha! Indeed it is uniformly the case, especially in the East, that the brutal violence of hoary tyrants, as well as their cruelty, grows with their years.

There is the less difficulty in conceiving that, after the lapse of twenty years, the people may have become reconciled to him, since his second election to the consulship, which might also create surprise, was the act of the curies: and hence he may have taken his seat in the first decemvirate by virtue of his office. Livy himself has preserved two statements from old annals, which agree with the Fasti; one in IV. 48, where Ap. Claudius, the military tribune of 352, is called *nepos Decemviri*, and the first Appius his *proavus* (which did not escape the notice of the clearsighted Glareanus, only he should not have altered the text); the second in III. 33, where the decemvir himself is said to have become *plebicola pro truci saevoque insectatore plebis.*

whom he proposed. It is said that the other decemvirs, to render his nomination morally impossible, chose him to preside at the election. Now it must certainly have been an acknowledged duty of the officer who filled this station, to prevent the consular power from being lodged in the same hands for two years in succession: and the rule he laid down for others was more especially prescribed by honour and conscience to the president himself. The existence of such a rule is evident from the Fasti: for it cannot be by mere accident, that down to this time, with the exception of Publicola, no instance occurs of the same person's being consul in two consecutive years. The ground for it is clear; he who had the *imperium* could not be called to account: and now at all events it must have been positively enjoined in the laws, a longer term than a year having been assigned to the decemvirate. Nevertheless this rule certainly had never affected the presiding interrex. Appius may have coloured his proceeding by alledging that they had all merely been interrexes: and this plea must have been admitted; for, without the confirmation of the curies, he could not have held the office.

As censor and pretor, he was the first person in the college; which moreover he swayed by his personal authority, in the same manner as Critias and Charicles fifty years later controlled and kept in subjection the council of the Thirty Tyrants. Q. Fabius, who had thrice been consul, in some degree shared his power. With the magic spell of that commanding superiority, which when it is supported by supercilious arrogance, and exercised by a man of high rank, within the walls of a council-room, in the presence of approving associates, none but very vigorous minds can resist, Appius may easily have reduced the majority at least of his plebeian collegues to passive tools. For none of them are mentioned in the history of the previous commotions; so that they probably were men of no personal consequence. Still, in the enactment,

of laws which wounded so many feelings, and disappointed so many wishes, a strong opposition must have been experienced; though there can have been no open discussion out of the senate: for the first year of this decemvirate had almost elapst, before the two Tables were made public[755].

But in no way could he have procured the consent either of his plebeian collegues, or of the centuries, to abolishing the *connubium* between the two orders[56]: though that a separation already existing should be retained, is, under such influence, very conceivable. Religious scruples were undoubtedly urged as a motive. A patrician marriage required auspices; and of these the plebs was asserted to be incapable. A politic plebeian might readily allow the barrier to stand: since the distinction, which hurt the feelings of his order, increast its strength. For marriages of disparagement, which certainly were far from rare, gave rise to families, which, being excluded from the patricianship, became so many accessions to the plebs, and henceforward at least without needing a formal admission. He might observe with

755 Livy, III. 37. Zonaras, VII. 18: 'Επ' ἐξόδῳ τοῦ ἔτους.

56 Very possibly there may have been no law on this head in the Papirian digest; for it was necessary that the *connubium* should be expressly granted, before it could subsist: but it is not likely that anybody searcht there for it. The mistake easily arose, when it was overlookt that the Twelve Tables were nothing more than the ancient statutes consolidated. To get rid of it entirely, let me observe that before the decemvirate we find both patrician and plebeian Sicinii and Genucii; even if it should be contended that the plebeian rank of the Marcelli, and of so many other families in later times, which however cannot all have sprung up in the space of four years, may be better explained by a transition to the plebs. The *connubium* of the Fabii with the Maluentans (see note 437), before it existed between them and the plebeians, is probably to be accounted for from the Sabine origin of their house: it is even natural that all the Tities should have had it with all the Sabellians; but nothing can be inferred from this as to the other two tribes.

a smile too, how in the same proportion his adversaries were weakening, and, if their folly lasted, would destroy themselves. These mixt marriages were quite as reputable as those celebrated with the right of confarreation. They were not concubinages: the only difference was, that, though the father was a patrician, the children belonged to the same order with their mother.

But the child was as little capable of inheriting from its father, as a son who had been emancipated; for it was not under its father's power. By law, the inheritance devolved upon the brothers and sisters born in legitimate wedlock, and in default of these on nephews and nieces; if these too failed, on the house. A trace of the same regulation, as having prevailed among the German tribes, so long as they consisted of houses, like the early Romans, has been preserved in the customary law on the extreme border of Germany. In the island of Fehmern[757] he who belongs to a sept, if he makes a will, must pay the sept a certain sum of money. This is clearly a compensation for the right of inheritance: and the like custom would have been introduced at Rome, had not the gens been included in other more comprehensive bodies. But as the property of an extinct house escheated to the cury, that of an extinct cury to the *publicum* of the citizens at large, the consent of the whole populus was requisite: and this is the origin of the rule that testaments were to be made in the presence of the pontiff and the curies. The plebeian houses indeed were not so connected; but the whole order had a public coffer in the temple of Ceres[58]: and when the army, assembled in centuries, either on the field of Mars, or before a battle, past the last will of a soldier into law, it thereby resigned the claims of the whole body to his property. These general assemblies had far less temptation

[757] The population is supposed to be a colony from Ditmarsh.

[58] Vol. I. p. 621.

than narrower and directly interested circles to hinder parents from providing for the natural objects of their care. On the other hand their doing so was favoured by a universal sympathy. Hence that consent, which originally was preceded by actual deliberation, became in course of time a mere form: and thus the lawgivers were able to allow every Roman father an unrestricted right of determining by will concerning his property and the guardianship of his children; in consequence of which both the comitia were merely represented symbolically. The motive for such an enactment was the reflexion, which would force itself on men's minds, that at some future time, after the number of the patrician families had been continually lessened by cases of disparagement, they might perhaps conspire to enforce the right of giving or withholding their assent, to the injury of their kinsmen of half-blood. Thus the institution of the houses was undermined, and could not fail to be so, because their silly arrogance would not accede to a free *connubium*.

Four years after however they were compelled to introduce it. But still the unlimited discretion in making wills, being found agreeable, as every kind of liberty is, was retained. Indeed, at this juncture, how could any one wish to make alterations in the civil code, which had only just been establisht? But when the family spirit relaxt, this liberty was abused more and more grossly every day. The attempts to check it by the Furian and other laws were of no avail. On the other hand, by a literal construction of the Tables, the right of making testamentary dispositions was withheld from women[759], in order that in their case at least, when they were their own mistresses, the property of the house might be preserved: an exception too repugnant to the manners of later times, and to equity, to hold out against the inventive astuteness of the jurists.

[759] Because the power was bestowed only on the *paterfamilias*.

The law of debt against the plebeians, which operated with such cruelty, and which likewise assuredly was only retained by the Tables from earlier ages, will be discust in the sequel, when we come to those times of extreme distress, which rendered it more intolerable than the lawgivers probably anticipated. It may be presumed however that they did not allow so horrible a law to stand, without setting some limits to usury: and considering how well known the civil code of the Tables was, Tacitus can hardly have been mistaken in stating that the uncial interest was an enactment of theirs[760]. It must have been abolisht afterward, at a time when money was very scarce; and the law of 394 was only a revival of the earlier one.

The most injurious disparagement which the plebeians experienced, was the losing the right of appealing to their order from the decision of the decemvirs, which the patricians retained. That such was the case is clear; since the law of the restorers of freedom forbidding the creation of any magistrate from whom there lay no appeal, under pain of death, is one of those by which the plebeians gained a better system of law immediately after the fall of the tyrants. Nor can any one imagine that the superior order, which had the right of appealing even from a dictator, would give up its most precious franchise to a magistracy half composed of plebeians. According to all appearance, the assemblies of the tribes were entirely supprest, while those of the curies continued to subsist. The knights and the classes had now become a complete equivalent to the former; and the only magistracy which had hitherto transacted business with them, was abolisht. The plebeian decemvirs had the right of interposing, in the room of the tribunes, to protect the members of their order against their collegues. But the protection afforded by an individual, who could only avail himself of his official authority, was powerless compared

[760] Ann. VI. 16.

with that given by the man of the people, along with whom thousands raised their voices, and, if needful, their arms.

Even this weak protection they are said to have nullified, by binding themselves on oath not to oppose one another[761]. This may possibly mean that they agreed to let the voice of the majority be decisive: and as in the framing of the laws a single apostate vote may have sufficed to withhold certain liberties from the plebeians, so the going over of Sp. Oppius would have been enough to give the second decemvirate the character of an exclusively patrician domination; incredible as this sounds of a board in which the votes were divided equally between the two orders. At first, says Livy, the terrour they spread threatened all without distinction: by degrees it bent entirely against the plebs: the patricians were not molested. Young men of that body gathered round the decemvirs and their tribunal: here they got unjust judgements against the members of the commonalty. Soon things came to such a pass, that all whom they chose to accuse were scourged and beheaded, and their estates granted to the prosecutor for his trouble. This, he says, was the price for which the patrician youth sold their aid to the tyrants: while the leading men of the order, maliciously exulting over the commonalty, whose endeavours after freedom had plunged it in this calamity, heapt injury upon injury, in order that the plebeians might be led to regard the restoration of the consulship, even without the tribunate, as a benefit[62]. Dion spoke of the patrician

[761] Intercessionem consensu sustulerant: Livy, III. 36. Ὅρκια τεμόντες — σφίσιν αὐτοῖς ἔθεντο περὶ μηδενὸς ἀλλήλοις ἐναντιοῦσθαι. Dionysius, x. 59.

[62] I beg my readers to convince themselves that Livy says all this distinctly (III. 36, 37). I do not like to transcribe long passages from a book that every one has at hand: detacht sentences, or a few words, many will neglect to look for in a chapter they merely see referred to.

youths who collected round the decemvirs, as of a band of armed ruffians that had conspired to support them[763]. All this may possibly have some foundation: but Livy's account is probably very much exaggerated, though in spite of his prejudices, he relates it without expressing the slightest doubt; so that it must unquestionably have been generally current. The military tribunes, who were the larger part of the college, cannot have taken share in any unjust decisions: these lay exclusively within the sphere of the pretorian and questorian offices. Moreover the only ones specified are the two of which the pretors were guilty; and these are widely different from the scenes here described. Cicero says nothing worse of the first year of these decemvirs, than that their justice and integrity was not so praiseworthy as that of their predecessors. He looks upon their excesses as the consequence of their unlimited authority. It is only in the last part of their rule, that he charges them with having abandoned themselves to cruelty, avarice, and lust[64]. As to the share taken by the whole patrician order in the transactions of this melancholy period, he says in another place, in cautious and well weighed language, that the decemvirate made the plebs feel hatred and indignation against the patricians[65]. That such was the case is evident: and it is perfectly intelligible, if we merely suppose

[763] *Νεανίσκους ἐκ τῶν εὐπατριδῶν θρασυτάτους ἐκλεξάμενοι πολλὰ δι᾽ αὐτῶν ἔπραξαν καὶ βίαια.* Zonaras, VII. 18. Dionysius (XI. 2) says a great deal in general terms about the outrages committed: but it is all rhetorical commonplace, without a single particular instance.

[64] Cicero, de re p. II. 36: Quorum non similiter fides nec justitia laudata. 37: Tertius annus—x viralis consecutus—libidinose et acerbe et avare praefuerunt. Of this I have not the least doubt; only I do not believe that they were worse than some of the consuls before them. But men felt unhappier; and the yoke was burst, because the indignation it roused could not find vent in popular assemblies.

[65] Cicero, Brutus, 14 (54): Plebem in Patres incitatam post x viralem invidiam.

them to have supported an obnoxious government. For even admitting that the decemvirs were utterly profligate, it would by no means follow that the members of their order partook extensively in their crimes. This in itself is incredible. There is nothing to warrant a notion that the peculiar virtues of the Roman religion and morals were alien to the patricians. On the contrary, we are rather to look for their origin among the most ancient citizens, the people of Numa.

It must not be overlookt, that the majority of the Romans would have been dissatisfied, even if these decemvirs had ruled as laudably as those of the first college, more especially if the government of the latter lasted only a few months. Their installation was a victory: their measures disposed men's minds to concord: it was delightful to be at harmony after so long a period of strife and rancour. But ere long men could not fail to miss the passionate stirrings, which for twenty years had occupied their existence, and had become requisite as a stimulant; and which in fact had attracted them to the measures they had contended for, far more than their specific objects. After long-continued wars full of great events, and after revolutions, when a nation enters on a state of permanent tranquillity, which cannot satisfy the wishes previously excited, such a feeling of restlessness is very common. The forum was silent and lifeless: faction was to be at an end: men were condemned to the round of everyday life, the interruption of which by such passionate excitements had perhaps often been deplored, but which was now found intolerably dull. In the place of indefinite expectations and visions which were utterly disappointed, a fixt consummated state of things stood before them, without hopes, without the possibility of progress, without freedom. Every one who remembered the interest he had once felt and loudly exprest in the discussions and resolutions on the steps to be taken, now found himself sunk into a state of mere dependence.

Every guarantee was given up: the plebeians saw they had been overreacht, and assuredly must have heard the taunts of malicious exultation. In addition to all this, the decemvirs, by appearing each with twelve lictors, and replacing the axe in the fasces, proclaimed that, like tyrants, they needed and sought protection and force from a guard[766].

The languour of the commonwealth extended even to the senate, which only met for form's sake on the usual days, without having any business to transact: hence most of the senators left the city for their farms. The first year after the ides of May, 304, the day on which the decemvirs entered into office, past away without any outward event. There must have been an armistice still on foot with the neighbouring states. The business of putting the new laws in action, particularly by enrolling all the citizens in the general tribes, probably filled up the time. One might have excused the government, even if it had sought a pretext for war, to employ and enliven the mistuned minds of the people: it is said however that the Aequians and Sabines began the hostilities. The former again encampt on mount Algidus and threatened Tusculum: while the latter carried off a great booty from the Roman territory beyond the Anio, and took up a position near Eretum. It was high time that the senate, according to the legal forms, should give orders for legions to be levied, and should direct the questors to open the treasury and take out the standard, as well as the money, which even before the reestablishment of pay for the troops, was necessary to a certain amount for a campaign. Still the conduct of the decemvirs in convening it, though there was no veto to obstruct their levies, proves that at least they had no intention of shewing a want of respect for its authority.

The proceedings of this session, the way in which

[766] Δορυφόροι μὲν οὔ, πελεκυφόροι δέ: compare Herodotus, I. 59.

L. Valerius and M. Horatius, the grandsons of the founders of the commonwealth, spoke out boldly and threateningly, though without effect, against the tyrants, are related by both our historians after the same annalist, perhaps with the distinct purpose of gratifying Messalla; and by Livy in so masterly a manner, that it is a great sacrifice to deprive the inconsiderable occurrences of this period of the graces they acquire in his narrative. I cannot however esteem its substance authentic; since the whole rests on the notion that the decemvirs prolonged their office by an arbitrary act of their own. There seems to me no doubt that, if not wholly invented, it was at all events spun out of a few mere hints found in the funeral orations of the Valerian house, at a late age, by clients. So long as ancient literature meets with minds capable of admiring it, the account will be read in Livy; and with greater admiration than ever, when a distinct notion of the real state of affairs has become generally current.

The conscripts we forced to enter the legions without delay: but they were out of heart; and the disastrous issue is again, and apparently not without ground, imputed to the discontent of the soldiers. Both the armies were defeated: that which lost the day against the Sabines near Eretum, fortified a camp between Fidenae and Crustumeria. On mount Algidus the rout was complete: the camp and baggage fell a prey to the conquerors: the fugitives took shelter within the walls of Tusculum. The decemvirs sent them a reinforcement and arms, with orders to take the field again; whereupon they occupied a position on mount Faiola, on one side of Monte Cavo[767]. Q. Fabius too and his collegues received instructions to advance into the enemy's country.

[767] The *mons Vecilius* (Livy, III. 50) from its site can scarcely be any other than this hill, for which else we have no ancient name.

In this army there was a veteran, to whom tradition ascribes prodigious exploits and honours, L. Sicinius[768] Dentatus. Varro found it related of him, that he had fought in a hundred and twenty fields, had slain eight foemen in single combat, that he had five and forty scars on his body, no one of them on his back, had earned honorary badges and rewards, horse-trappings, pikes, collars and bracelets, and the various crowns that were bestowed on valour, to an almost incalculable number, with a separate statement of each; an enumeration indeed which assumes a very apocryphal aspect, when it is added that he accompanied the triumph of nine generals, whose victories were principally owing to his valour. For our historians, who assuredly never omitted a victory, though they have inserted several fictitious ones, scarcely tell of so many in which any one person could have shared, during the preceding half century[69]. However this may be, he has been kept in remembrance as a hero whom afterages could not match, and has been called the Roman Achilles. We may more aptly term him the Roman Roland; more especially since, like the paladin of French romance, he fell by treachery. No warrior of a chronicled age should be compared with the heroes of Greek poetry, no Roman centurion with the son of Peleus.

[768] In both of our historians, as well as in Harduin's manuscripts of Pliny (VII. 27) his name is *Siccius:* but Varro, as quoted by Fulgentius under *nefrendes*, called him *Sicinius:* and so do Valerius Maximus (II. 3. 24), Festus under *obsidionalis*, and the manuscripts of Gellius (II. 11). In Dionysius the consul of the year 267 is also called *Siccius.*

[69] For where a triumph is ascribed to two consuls in the same year, he at all events can only have served under one. I am afraid however that the author of the statement did not take this into account, but reckoned up all the triumphs he found mentioned from the year 261 downward. The veteran is imagined to have been in the first year of his exemption from service, after 45 campaigns from the year in which he laid aside the *praetexta:* for every campaign he has a scar. The first would coincide with the year of the mise of the Sacred Mount. 120 is one of the commonest typical numbers.

The district of Crustumeria awakened the recollection of the secession by which the commonalty forty-five years before obtained their charter there on the Sacred Mount: and Sicinius, who in his tribuneship had got the consul T. Romilius condemned to a fine by the tribes, chid the soldiers for their cowardice in shrinking from the step, to which their fathers had followed his kinsman. The generals determined on his death: of the manner in which they effected it, there must have been two accounts. I am convinced that the most ancient and the grander one related that the defeated army were reinforced by a legion of veterans, that is, by forty cohorts of the first class, containing eight hundred men[770]: who were all placed under the command of the obnoxious soldier, were betrayed to the enemy, and perisht. Some writer of the same stamp with L. Piso, thinking this story too extravagant, transformed it into the one we now read in our histories, which runs thus. Q. Fabius sent Sicinius along with a band of assassins, to view the country, and choose a place for a camp. In a lone spot his companions fell upon him, when he suspected no danger: he died, but not unavenged, amid a heap of traitors whom he slew. In this state he was found by his comrades, who, on the report that he had fallen in an ambush of the enemy, hastened to search for his body; and who found him surrounded by none but Romans, slain, not with him, but by his hand. The treachery was detected: but the soldiers were pacified by a splendid funeral, which the decemvirs ordered for him. Here again later authors were unwilling to give up either of the two stories, but made the betrayal of the cohort fail, and placed it in the consulship of Romilius. Thus they got a cause for the charge brought against him by Sicinius: and not only was the history enricht with these additions; but they also found out that Romilius must have changed sides and been

[770] See Vol. I. note 1093.

reconciled to the tribunes, this being necessary to render it conceivable that he should have been chosen one of the lawgivers by the people. For that he could take his seat among them as a magistrate appointed by the curies, never entered the head of an annalist of this cast and date.

In the meanwhile Appius Claudius cast his lustful eyes on a lovely and modest virgin, the daughter of a worthy centurion, L. Virginius, one of the noble members of his order[771]. The tribune Aulus, who had contended so many years for the introduction of equal laws, was of the same house: and the maiden was betrothed to L. Icilius, who had rendered his tribuneship memorable. The decemvir tried offers and allurements without success. But violence and cruelty gave his pleasures a fresh zest: and the absence of her father, who was serving in the army on mount Algidus, afforded him an opportunity of effecting his purpose. A client of his house was suborned to assert that Virginia was the child of a female slave of his, and had been imposed on her reputed father by his childless wife. The art of writing in those days was not learnt, at least not always, in childhood: being a somewhat rare accomplishment, it might be reserved for riper years. On her way to her school, which, as is the custom at this day in the eastern bazars, was one of the shops round the Forum, the mock plaintiff laid hold on the unprotected virgin. The cry of her maid for help drew the people to the spot; and the interest awakened by her beauty grew still stronger, when the names of her father and her betrothed lover ran round. Any attempt at violence would have been repelled. But the ruffian said he needed none; he meant to claim his right from the pretor, who was sitting at judgement in the comitium.

[771] Diodorus, XII. 24: Ἐρασθεὶς εὐγενοῦς παρθένου πενιχρᾶς. The Virginii undoubtedly belonged to the patrician house of that name.

This was Appius Claudius. In his presence he repeated the tale he had learnt, and demanded that his bondmaid should be adjudged to him.

If the child of a female slave had been falsely past off as free, her master had an imprescriptible right to claim it: and it was no uncommon thing for a reputed citizen to lose his freedom in this way. Until judgement was given, the person claimed continued in possession of his personal rights; but he was obliged to give security for his appearance in court. This rule was reenacted in the Twelve Tables. It certainly did not originate with them. It must have obtained wherever slavery existed, and is one of the principles common to the laws of all nations (the *jus gentium*). But above all must this right have been held sacred, when the dispute was about the freedom of a woman: for the lot of a female slave exposed her to the most brutal treatment. For this very reason Appius decided against the rule of his own law, when those who appeared in behalf of the virgin entreated that judgement might be postponed, until her father could be sent for from the camp to defend his dearest interests in person. This, the decemvir said, was reasonable: till then the plaintiff was to keep the maid safe in his house, and to give security for producing her in court, in case her reputed father appeared on the summons. Had the girl been her own mistress, or had her father been present, M. Claudius must have been content with having security given to him. But no one could legally stand surety for a child who was still under her father's power, except he; and if the plaintiff should be simple enough to accept an invalid security, the pretor who permitted it would transgress his duty.

At this horrible sentence a loud cry of lamentation burst forth. The rumour of what was going on had by this time brought Icilius to the spot, along with P. Numitorius, the damsel's uncle. He forced his way through the lictors to the tribunal of the audacious judge. The

circle round the maid grew thicker every moment. It was now impossible to drag her away. Appius however reflected that the crowd, which compassion had drawn together, if it were let disperse without violence, would cool during the night, that apprehensions would awake, and the multitude would then be trembling spectators of the execution of what in the first heat of their feelings they would have resisted even to death. By the morrow too he might raise a large force, and with the help of his partisans, and the hosts of their clients, might even venture upon open violence, most of the ablebodied men of the commonalty being away in the field. He altered his sentence therefore, as if he wisht to allay the furious ferment of the deluded populace by gentleness. He said he would let Virginia be bailed provisionally by those who thrust themselves forward as her friends, and would put off deciding the question, who was to give the legal security until a judge could determine the cause, to the following day[772]; that then, whether the father made his appearance or not, he should know how to maintain the dignity of the laws and of his office, and to give judgement fearlessly according to right.

The maiden's friends saw that, while the utmost exertions would be necessary to bring L. Virginius to the city before the hour of trial, the slightest delay would enable the tyrant to have him arrested in the camp. Icilius detained the court with arranging who were to be the sureties. Everybody present raised his hand and offered himself. Appius staid yet a while, to keep up the show of having come to transact judicial business. In the mean time two friends of Virginius retired secretly, and rode full speed to the camp. Virginius obtained leave to go to the city on some trivial pretext, and had

[772] The distinction between the preliminary and the definitive bail is perfectly clear in Livy: it is not till the second day that Appius gives the *vindicias secundum servitutem*: on the first he pronounces nothing.

already performed a great part of his journey, when the messenger from Appius arrived with instructions to detain him.

At daybreak the Forum filled with men and women, looking anxiously for the decision. Virginius and his daughter came with their clothes rent. He fell at the feet of the spectators, and implored their aid, warning them that all were threatened with a like calamity. Icilius spoke more vehemently. The women in their company sobbed. All joined in their wailing. But, when Ap. Claudius came to the tribunal with a great train, as if to encounter a conspiracy, all were silent. The mock plaintiff renewed his demand. He had been instructed to tax the pretor with weakness for sacrificing his rights to such officious interference. What colour Appius, now that her father was present, gave to his judgement that Virginia should be consigned to the party who claimed her as his slave, until a judge should decide the matter, Livy could not find anywhere credibly related: he confines himself therefore to merely reporting the sentence[773]. Forthwith M. Claudius stept forward to take possession of the maid: he was unable to force his way to her through her friends: the men threatened and curst. Appius enjoined silence, and said that the rebellion which was

[773] Livy takes a very clear view of the whole case, and expresses his astonishment at it, from his inability to imagine any pretext for the profligate decree, Virginia's father being present. Perhaps this is what misled Dionysius to suppose that Virginia was adjudged to the plaintiff as his property: a supposition refuted by the positive statement that the impeachment of Appius by the tribunes was grounded on his having given *vindicias secundum servitutem*: see Livy, III. 56, and Cicero, quoted by Asconius on the speech for Cornelius—*ille ex Decemviris qui contra libertatem vindicias dederit.* It mattered not to Appius whether Virginia was to remain in the power of M. Claudius as his slave; when he had sated his lust, he would not have cared if its victim had been cast out either alive or a corpse into the streets. Let the reader think of the Duc de Fronsac and others of the same cast in the reign of Lewis the Fifteenth.

breaking out had not taken him by surprise: he had been well aware the day before that the ringleaders were merely seeking for a pretext: he knew that seditious meetings had been held the whole night long. He however, and his collegues in the government, were stedfastly resolved to maintain their sacred rights. His brother patricians were armed, and attended by armed bands of trusty adherents. Every one must look to himself. No harm should be done to the obedient citizens: but wo to the rebels! *Lictors, disperse the mob; make room for the man to take away the girl!*

Overpowered by blind terrour, the people drew back from the unhappy family. Hereupon Virginius earnestly entreated for the single favour of being allowed to take leave of his daughter, and to question the nurse about the truth in her presence. He stept aside with the two women under an arcade, snatcht up a knife from a butcher's stall, and plunged it into his daughter's breast. The lictors did not dare to stop him, when, holding the bloody steel on high, he hastened to the gate. He was soon protected by the concourse of a great crowd. A still more numerous one collected in the Forum around Icilius and Numitorius, L. Valerius and M. Horatius, who raised the call to freedom over the virgin corpse. The lictors were overpowered, their fasces broken. Appius from the Vulcanal addrest the patricians in the comitium[774], exhorting them to hold by him, and to seize or cut down the leaders of the insurrection. But the terrour had shifted its ground. He found himself deserted. Everybody crowded about L. Valerius, who was haranguing

[774] Ἀναβὰς ἐπὶ τοῦ Ἡφαίστου τὸ ἵερον: Dionysius, XI. 39: from which it necessarily follows that Valerius, ἕτερον τόπον τῆς ἀγορᾶς καταλαβόμενος, occupied the spot afterward called the Rostra. As this was adapted for speaking to the *concio* in the Forum, so was the Vulcanal (see Vol. I. note 1344: above, note 524) for addressing the patricians as they stood in the comitium. According to Livy, Appius and the patriots spoke to the same assembly.

the people, after the manner of the tribunes, from the *templum*. Appius muffled his face and fled into a house.

In the midst of this tumult, his collegue Sp. Oppius convened the senate. This news quieted the people: an ordinance of the senate might deprive the decemvirs of the *imperium*. But a great number of the patricians thought that in such a case they should no longer be safe. Even many who knew themselves innocent, might dread a vindictive counter-revolution. The champions of the freedom of the plebeians were already demanding the restoration of the tribuneship at the doors of the senatehouse. Was it to be expected that they in return would give up the share they had gained in the decemvirate? How bitterly would the patricians soon have to rue this first compliance, if they yielded through shame lest they should seem to screen the guilty! Thus the senate broke up without coming to any resolution, with nothing but an indefinite purpose to protract matters and gain time. Some zealous members of the oligarchy were sent to the camps, to use all means for keeping them in obedience: an idle attempt! From the legion of veterans which lay before the city, ready to march to any quarter where the enemy should advance, half the centuries of the first class had accompanied Virginius to mount Algidus[775]: and no sooner had the soldiers there heard what had happened, than they pluckt up their standards, and set out for Rome. The Aventine was open to them. They occupied it; and numbers flockt to them. The other army likewise, at the call of Icilius and Numitorius[76], renounced the tyrants.

[775] Both the historians state that he was accompanied by 400 armed men: Dionysius, XI. 37; Livy, III. 50. The latter here again tries to take away the appearance of an exact number: *agmine prope quadringentorum hominum.* A legion contained forty centuries of the first class, each consisting at this time of twenty men. Compare note 569.

[76] They too were certainly conceived to have gone out, not alone and unprotected, but escorted by the remaining twenty centuries of

The whole plebeian force acknowledged twenty tribunes as its magistrates: so that each tribe was represented by one, as the Servian were of old[777]. Out of each decury one was chosen as foreman, just as in 261 the number of the tribunes of the people at first was two[78].

The senate however did not abandon the cause of the tyrants. Three deputies came to the Aventine to brand the proceedings of the army as rebellion, and to offer pardon on condition of its returning to its duty without delay. They were dismist without an answer, but were told that, if the senate wisht to negotiate, it might send Valerius and Horatius; nobody else would be received. To these the moderate members of the ruling class now addrest themselves. They were no longer treated as traitors: but they were to make no concessions; only to use their popularity in prevailing upon the people by persuasion to submit. They required that the decemvirs should abdicate. This was refused. The patricians still presumed on their bands of clients. Perhaps too they again reckoned on the dependent towns. Nor was a franchise, such as they were willing to grant to the plebeians, too precious to be offered in case of need to the slaves; and for them it was tempting enough.

M. Duilius, an ex-tribune, a man of equal firmness

the first class in the veteran legion: and as this was thus broken up, the forty centuries of the next two classes, and the lightarmed troops, were supposed to have marcht into the city to protect those who were left defenseless. The Esquiline too must have had a garrison, until the open parts of the city were entirely evacuated by the plebs. I do not say that this is historical: but such was the course of the narrative, and its purport.

777 See Vol. I. p. 420. Of these twenty tribunes Pomponius had read in Gaius, without understanding his meaning: l. 2. § 25. de O. J. (I. 11). *Interdum viginti fuerunt, interdum plures, nonnunquam pauciores:* more than twenty, because the number of tribes was raised to thirty-five; fewer, because he confounds these phylarchs with the consular military tribunes.

78 Livy, III. 51. Dionysius, XI. 44. Zonaras, VII. 18.

and moderation, told the plebs that the quarrel would never come to an end in this way; that the senate still fancied they had not made up their minds to go to extremities: only when they had quitted the city, when they were seen ready, if reduced to the necessity, to found or adopt a new home, and to renounce their mother-city for ever, when no pledge was left within its walls to bind them to it, then, and not till then, would they obtain a hearing: they must once more go forth, and encamp on the Sacred Mount. This was done. As the commonalty had occupied the Aventine, so the patricians had garrisoned the Capitol, and the fortresses in their parts of the city. A tacit truce however prevailed. No attempt was made to stop the cohorts, which descended from the Aventine, and proceeded in martial array, without doing any mischief, through the heart of the city, along the Velabrum, across the Forum, through the Subura, up the path by Santa Agata[779], and out by the Colline gate. From the Esquiline, and the scattered dwellings of their order in other quarters, they were joined by men and women, old and young, by all who were able to stir, or could be helpt along by their friends, escorted by the veteran cohorts of the lower classes[80]. The whole body encampt on the Sacred Mount, by the side of the legion which Icilius had induced to revolt[81]. To this

[779] The Alta Semita.

[80] See note 776. Of course they continued to occupy the Aventine, and kept its gates closed. Its inhabitants did not march out, and may probably have given shelter to many others.

[81] According to Livy this army had previously entered by the Colline gate under arms, bearing its standards aloft, and, marching through the city, had joined the troops from mount Algidus on the Aventine, and was now returning in conjunction with them along the road it had come. I have thrown this story aside: it is nothing more than an interpolation of the second version (see note 785), according to the practice I have so often noticed. Not to dwell on other grounds, is it likely that the camp by Crustumeria would be

spot they transferred their government. On this occasion again we find the incredible praise bestowed on them, that none of these assembled thousands did any injury to the property of their enemies[782].

The stubbornness of their adversaries now gave way. Valerius and Horatius came to the camp to hear what the people demanded. They were cordially received. Icilius spoke in behalf of the plebs. He required the restoration of the tribuneship and the right of appeal; next, that no one should be accounted criminal for having urged the people and the army to the insurrection; and lastly, that the decemvirs should be delivered up to suffer death at the stake. The commissioners answered, that the first two demands were so just, it was their duty rather to have offered them. Nor was it unreasonable to wish that the decemvirs should be punisht with the utmost rigour. But the republic needed conciliatory measures. Such a horrible revenge would hand down the party-feuds from generation to generation. Their oppressors would be sufficiently humiliated, if they were forced to live under the same laws with their fellow-citizens: nor would they, by being silent, forfeit their right of impeaching any individual offender. The commonalty trusted itself to the wishes and the conscience of its honest advisers.

When Valerius and Horatius made their report in the senate, and said that the outlawry of the decemvirs was not insisted on, all opposition was husht. Yet even this condition must have been acceded to: for the patricians felt they were powerless, and quite incapable of holding out any longer. With regard to the future constitution nothing was decided: a delay injurious to the commonalty, but very intelligible, since negotiations on this point

broken up, when it cut off all supplies that came down the Tiber, as the Aventine did those from the sea?

782 This did very well in the legend: but how can any one relate it seriously? Even the Vendeans in their best days were not so pure and free from all baser admixture.

would have put off the peace. As it was, both parties expected to reap the greatest advantage in the end from this postponement. The senate issued an ordinance for the decemvirs to lay down their office, for consuls to be chosen, and for the chief pontiff to preside at the election of tribunes. Hereupon the seceders returned to Rome. The Capitol was given up to them[783]. From thence they marcht in military order to the Aventine, to elect their tribunes.

Thus Livy relates the course of this revolution: and Dionysius[84] and Dion adopted the same account. But some fragments of Cicero contain a tradition, which, from the death of Virginia, is throughout at variance with it. According to this, the insurgents proceeded with Virginius from mount Algidus straight to the Sacred Mount: there peace was concluded with them by the three deputies, whose embassy is represented in the other narrative to have been fruitless: and it was only after this that the army in military array marcht in and occupied the Aventine[85]. So little was Cicero aware of the mission of L. Valerius and M. Horatius, of whom he tells us that to promote peace they politicly courted popularity[86], that he expressly says, the speeches with which the former quieted the plebeians, when exasperated against the whole patrician order, were delivered after the fall of the decemvirate[87]. Now though

783 This very important circumstance has been preserved by Cicero, pro Cornel. 1. 24. ed. Or. *Inde armati in Capitolium venerunt:* nor has it any immediate connexion with the discordant version which he follows.

84 The pages containing his circumstantial narrative are lost: but from what precedes, and from XI. 45, there can be no doubt that the rest agreed entirely with Livy.

85 De re p. II. 37, and the fragment of the speech for Cornelius quoted above.

86 De re p. II. 31.

87 Brut. 14 (54): Qui post decemviralem invidiam plebem in Patres incitatam legibus et concionibus suis mitigaverit.

in other respects there is no single point that can decide in favour of either of these narratives, I think it is clear that the names of the three commissioners must have been recorded officially: and for this there can only have been occasion, supposing that they concluded the peace; not so, if their message was ineffectual. We can conceive that, when the plebs revived in its corporate capacity, the three tribes would also be represented in the negotiation by three deputies. Nor would it be anything more than the ordinary way of combining two narratives together, for the one, founded on the funeral panegyrics of the Valerii, to have inserted the first embassy, with a statement that it failed. This Valerian account may be thought to be in some degree supported by Diodorus[788]; at least so far as he too makes the army with Virginius occupy the Aventine immediately. Events then proceed with the utmost rapidity. The decemvirs prepare for resistance: but the better-disposed patricians mediate an adjustment, the terms of which he professes to report. In some parts however they are so glaringly absurd, as to afford strong ground for believing, that, even where the blunder appears to be trifling, there may be a far more important one which escapes our view. It is a great pity that his heedlessness has so spoilt the accounts he had before him, which at all events would have been highly deserving of attention.

788 xii. 24, 25.

THE FIRST YEAR AFTER THE RESTORATION OF FREEDOM.

It sounds exceedingly strange, that, at a season when the vanquisht party cannot possibly have ventured on usurping any power, the chief pontiff, a patrician, chosen by the curies, and the president of their assembly[789], should have been called to superintend the election of tribunes on the restoration of their office; more especially as this was not the course at its first institution. The circumstances of the two cases however were not the same. In the earlier one the tribes of the commonalty formed a separate body, and the two first tribunes of the people, who presided at the election of three additional ones, were already the decurions among the old regularly elected tribunes of the Servian constitution. But those among whom M. Oppius and Sex. Manilius occupied the same place, were chosen during the insurrection. For on the abolition of the plebs as a distinct order its local tribunes ceast to exist: and if the national tribes had phylarchs of their own, there must at the least have been a good many patricians among them. Moreover the original tribunes were confirmed by the curies: and this sanction, which had long since been abolisht, was now supplied once for all by the presence and assent of the head of the pontifical college; which no doubt even at this period was competent to give validity to a merely

[789] See note 502.

formal proceeding of the patrician order. Such a proceeding was requisite, to repeal the law which had been past by the curies, under the auspices of the pontiffs, abolishing the tribuneship: for the restoration of freedom brookt no delay. The plebeians in fine had no institution like that of the interrexes, by means of which the line of the patrician magistrates was secured from interruption.

The new tribunes called a meeting of the plebs on a meadow at the foot of the Capitoline, on the same side with the field of Mars, where the Flaminian circus was long after built[790], and where beyond doubt the plebeian games were celebrated from very early times: for the place allotted to these must be lookt for without the great Circus; just as the Forum was distinct from the Comitium. The first measure of this assembly, an act of indemnity to all who had taken part in the insurrection, gave the full force of law to the ordinance of the senate guaranteeing the same thing: by this the commonalty secured the legality of its proceedings. The mover of this measure was L. Icilius, the betrothed lover of Virginia, who had been chosen tribune along with her father and uncle, to appease the cry of her manes for vengeance: but the soul of the whole college was M. Duilius. On his motion the commonalty ordered that the interrexes should let two patrician consuls, subject to appeal, be freely elected by the centuries[91], to exercise the supreme authority.

[790] A reader of Livy, who is a stranger to the topography of Rome, will imagine this place to have been on the Aventine: but the words *ea omnia etc.* (III. 54) refer only to the business transacted by the tribunes after their election. This is one of the instances which shew how far the classical authors were from acknowledging any such rule, as that a writer ought to express himself so that he cannot possibly be misunderstood even by an uninformed and inattentive reader, and that otherwise such a reader is fully justified in condemning passages, which do not give the slightest offense to one conversant with the subject.

[91] Dionysius, XI. 45, expressly mentions their being elected by the centuries, clearly following some annalist, who wisht to point out

This too can only have been an act, by which the tribes, as a branch of the legislature, confirmed a preceding ordinance of the patricians, not one by which they took it upon themselves to settle the constitution, a usurpation which would have been no less ridiculous than reprehensible. There cannot be a doubt that the leaders of the two orders had come to an agreement on this subject before the return of the plebs. For if the commonalty was to have its tribunes, and half the places in the decemvirate besides, it would only want a large number of votes in the senate to have a decided preponderance. Two ways offered for introducing a real balance between the orders; either to make the tribunate common to both, as the tribes now were; or to alter the composition of the decemviral college. On this point equitable persons of both parties must have agreed. On it Valerius and Horatius must have insisted, even supposing them to have been quite free from the wish, which would not have been a blamable one, to favour their own order. Duilius himself manifestly entertained the very same view. But even though intentions had been honest on all sides, the moment was too pressing for them to come to an understanding on what was best to be done: and had this been settled, there were still enormous difficulties to prevent its being carried into effect: so that it was necessary to adopt a provisional measure, and let time smooth the road for something better.

It was apparently because the office thus introduced was not meant as a permanent renewal of the earlier and more powerful one, that the name of *consuls* was substituted for the older one of *pretors*[792]. It clearly implies

that this course of proceeding, after having been discontinued for 36 years, was now completely restored. He himself must have thought it strange, that the centuries, the constitution of which he usually represents as the cause of the oligarchal elections, were the very body that chose the most popular men consuls.

792 It was merely the title of this provisional magistracy, and was

that their power was reduced; since it merely signifies the union of two persons in the same office, not authority and rule.

In conceding the consulship to the patricians the commonalty made no sacrifice on this occasion. It was reasonable that they should grant it as a joint reward to the two generous men who had shewn themselves such stanch friends to them and to the republic. The election of L. Valerius and M. Horatius was assuredly a boon conferred by the plebs[793], which the senate and the curies, however loth, could not refuse to confirm. As in earlier times we may often perceive that the elective franchise had been usurpt, because the personal character of one of the consuls is such that he could never have been elected by the classes; so in this case it is manifest that both the consuls were chosen by the classes, as indeed we find it expressly stated[94]. This freedom of election, which was restored with a view to the decemvirate, continued henceforward, even after the consulship became a permanent office[95].

The men of the people's choice did not disappoint its confidence. Unanimous in the exercise of power, as they had been in their resistance to tyranny, they provided

retained by accident. Zonaras, VII. 19: Τότε λέγεται πρῶτον ὑπάτους αὐτοὺς προσαγορευθῆναι, στρατηγοὺς καλουμένους τὸ πρότερον. Livy therefore ought not to have said (III. 55) that the consuls *at this time* were called pretors. What if the decemvirs were called *consules* in the Twelve Tables? See Vol. I. p. 521.

793 In Livy, III. 67, the true reading is that of the manuscript of Latinius, *patricium quoque magistratum plebis donum fieri vidimus*, not *plebi*, which in Livy can never be the genitive except in phrases where the old form was fixt by usage.

94 See note 791.

95 Perhaps with a single exception, the year 316; of which I will speak when I come to it: and certainly by assuming the appointment of the censors the patricians shifted their usurpation of one place in the plenary consulship to the most powerful branch of the office when detacht from it.

for security of freedom by reviving old laws, and framing new ones. The senate could not refuse the ordinance requisite before these measures could be submitted to the centuries: nor could the general assembly of the houses withhold its assent. For the patricians were humbled, and full of anxiety on account of the impeachments hanging over them, with regard to which a gloomy silence still prevailed. Every one measured his danger by the consciousness of his guilt and of his hatred. The laws of the consuls were past sullenly, but without opposition[796].

The new tribunes had already exercised the right which was introduced by the Publilian law, and consummated by Icilius; and it was undoubtedly understood that their office was revived in the plenitude of its powers. Yet to obviate all pretense, that the powers acquired subsequently to its original institution were extinct, and that an ordinance of the plebs, even when it had received the assent of the patrician assembly, still was not a law[97], the consuls got the centuries to enact that an ordinance of the plebs should be held of equal force with one past by the centuries[98], under penalty of death and confiscation of property to all who contravened this principle[99]. The putting them thus on a level serves to shew, what indeed is clear enough without, that the express assent of the patrician assembly, which down to the Publilian law of 412 was indispensable to all bills past by the centuries, cannot have been dispenst with at this earlier period in the case of ordinances of the plebs.

[796] Livy, III. 55: Haec ut invitis ita non adversantibus patriciis transacta. 59: Multi erant qui mollius consultum dicerent, quod legum ab iis latarum Patres auctores fuissent.

[97] Livy, III. 55. Cum veluti in controverso jure esset tenerenturne Patres plebiscitis.

[98] Dionysius, XI. 45. *Τοὺς ὑπὸ τοῦ δήμου τεθέντας ἐν ταῖς φιλετικαῖς ἐκκλησίαις νόμους ἅπασι κεῖσθαι Ῥωμαίοις ἐξ ἴσου, τὴν αὐτὴν ἔχοντας δύναμιν τοῖς ἐν ταῖς λοχίτισιν ἐκκλησίαις τεθησομένοις.*

[99] Dionysius, XI. 45.

We must not be misled by the terms in which this law is reported by Livy, namely, that the ordinances past by the plebs in the assembly of the tribes were to be binding upon all the Quirites; though they certainly seem to convey a very different meaning. A time did indeed come, when the assembly of the people arbitrarily curtailed the power of the senate, and of the supreme magistrates, and retrencht the property of the nobles by agrarian laws[800]. At that time the ordinances of the plebs were laws for every Roman; and their legal validity could not be contested even by those who condemned them as ruinous. But at that same time with the exception of a small number of families, which were far from forming the most powerful and important part of the nobless, the plebs was the whole nation: whereas undoubtedly, when the tribunate was restored, no plebeian had yet a seat in the senate. Thus we are led by the plain aspect of the case to complete Livy's report of the Valerian enactment with this clause,—provided such ordinances are confirmed by the patricians. As yet an ordinance of the plebs was of no greater force than a bill which has past through the House of Commons, but which must receive the assent of the other two branches of the legislature, before it becomes law[1]. This, which is so clearly inferred by the circumstances of the case, is corroborated by the history of those bills, through which the equality of the plebeian order was gradually and slowly won. Here the obstacle always is that the patricians,—

[800] Polybius, VI. 16.

[1] The assemblies of the tribes after the time of the Hortensian law stand in the same relation to those of an earlier period with regard to their legislative power, in which a single house, made up solely of representatives, would have stood to the old House of Commons, supposing that a real republic, instead of oligarchy and usurpation, had arisen out of the Long Parliament. And in fact all the North-American legislatures are such democratical developments of the British Lower House.

sometimes the senate in the first instance, sometimes the curies alone,—refuse their assent, though on many occasions not expressly, but by pretending that the auspices break up their assembly, and thus stop the passing of the ordinance[802]. The sanction of the patricians, when obtained, raised it to a perfect law, of the same force with one proposed by a consul: and it was only after that sanction had either been entirely dropt, or was reduced to a mere form, that a verbal controversy could arise on the question whether such an enactment, though confessedly valid, was entitled to the name of a law[3]. As the elections and legislative acts that emanated from the centuries, were proceedings of a precisely similar nature, so was it also with those which began in the assembly of the tribes: and the inferior magistrates were elected by the tribes, but instated by the curies[4].

Now that the assembly of the plebs was recognized as a branch of the legislature, an ordinance originating in the senate might also be raised into law conversely, by the assent of the plebs on the motion of the tribunes[5]. Instances of this occur frequently in later times: none however is stated so distinctly as that which took place only four or five years after the Valerian laws, the institution of the censorship; when, it is said, the senate proposed the measure, the patricians eagerly took it up, and the tribunes made no opposition to it[6]. Now even

[802] This is what Dion means by the words βραχέα τινὰ ἐπιθειόζοντες (perhaps ἐπιθεσπίζοντες). Exc. de sent. p. 151.

[3] Sive lex sive plebiscitum sit.

[4] Gellius, XIII. 15: Minoribus creandis magistratibus tributis comitiis magistratus, sed justius (read *jus ejus*—E for T) curiata datur lege.

[5] The *auctoritas Patrum* might be given in the first instance, whether in full form by the senate and the curies, or by the former alone.

[6] Mentio illata ab Senatu est: et Patres laeti accepere (the curies)—et tribuni—haud sane tetendere. Livy, IV. 8.

if we suppose that the original procedure by which the censors were appointed, has been confounded in this passage with that by which their office was instituted, still the forms of legislation and election are confounded here only because they were closely allied: it is merely an errour in applying what the annalists knew to be true of other cases. There cannot be any misunderstanding however in the statement, that, twenty years before the later Publilian law, an ordinance of the senate was brought down to the tribes, to be past into a law[807]. How the senate came to prefer such a course for a law, the present is not the place to explain: it is clear enough however, that for urgent measures of administration it was desirable that the sanction, which it belonged properly to the centuries to give, should be procurable without waiting for a comitial day, or depending on auspices; seeing that the proceedings of the centuries might even be stopt by a shower. The earliest recorded instance of a course of proceeding, which afterward became extremely common, occurs in the year 342: and it may actually have been the first, since the object on that occasion was to soothe the irritation of the plebs by prudently anticipating its wishes[8].

It has commonly been supposed that in three laws enacted in the course of a hundred and sixty years, this of Valerius, the later Publilian law of 412, and the Hortensian, the principle that the ordinances of the plebs were to have the force of laws, was establisht in words

[807] Livy, VII. 15. De ambitu ab C. Poetelio tr. pl. auctoribus Patribus tum primum ad populum latum est. The misapplication of the word *populus* in this and similar passages I shall explain in the proper place. Soon after (16) we find an instance of the opposite course: haud aeque laeta Patribus—de unciario foenere a—tr. pl. rogatio est perlata, et plebs eam aliquanto cupidius scivit. Here the Patres come last, and give their assent, but reluctantly.

[8] Livy, IV. 41. S. C. factum—ut de quaestione—tribuni—ad plebem ferrent.—A plebe consensu populi consulibus negotium datur. See below, note 959.

substantially the same[809]. This looks as if the original law had been reenacted, having become obsolete through criminal neglect: as it was repeatedly necessary to renew the Valerian and Porcian laws against ignominious punishments. Yet there cannot have been any occasion for such a renewal when the dictator Publilius carried his law: for it is evident that the exercise of the rights of the commonalty had then become much more frequent and of greater importance, and that the power of the plebs was rising steadily and mightily. Either therefore must the same words have had a totally different meaning in each of these laws; or, as will appear probable enough to all, the historians caught up a hasty conception of their import, and exprest it in the terms peculiar and appropriate to one of them. I must not omit to point out here, what it was that they neglected to state, and by what stages the legislative power of the plebs attained to absolute soverainty; though the rule I have laid down for my work does not allow me to anticipate the progress of the history. The first step was to set aside the curies; and it became sufficient to give the *auctoritas patrum,* if the senate sent an ordinance down to the tribes, or adopted one past by them. This change may be ascribed to the dictator Q. Publilius. Half a century later the veto of the senate was also abolisht by the Hortensian law; and the tribes assumed the constituent authority, independent of that assembly: a dangerous absoluteness, against which good sense struggled long, and which was first decisively establisht by C. Flaminius in his tribunate. In proceedings which according to usage required a vote of the senate to set them on foot, such

[809] The Valerian, ut quod tributim plebes jussisset populum teneret: Livy, III. 55. The Publilian, ut plebiscita omnes Quirites tenerent: VIII. 12. The Hortensian, ut quod plebs jussisset omnes Quirites teneret; Pliny, XVI. 15: where the use of *jubere* with reference to the plebs is just as incorrect as that of *sciscere* would be if applied to the populus.

as the grant of the imperium, and other measures of the government, the abolition of the veto made no change. Nor was the senate deprived of the right of bringing forward a consular law: for a century after the Hortensian law, its initiative was acknowledged to be indispensable in these cases; and it was an act of usurpation in the tribunes to overstep this limit.

There must also be some omission in the report of the second law proposed by the same consuls, outlawing every one who should procure the creation of a magistrate without appeal; for, if these general terms had not been qualified, the appointment of a dictator would have been prohibited. The threat of so severe a punishment for an act productive of no advantage to the committer cannot have failed to prevent it.

The third law renewed the fearful penalty threatened against every one who should harm the tribunes and ediles, repeating the form of the original oath. The same protection was now extended to the judges[810], and to the decemvirs. These can only have been the plebeian ones; as is proved by their being coupled with the other plebeian officers, and by the imposition of the old oath by which the orders bound themselves to each other[11].

The same consuls further regulated, that a copy of all ordinances of the senate should be given to the plebeian ediles, and deposited in their archives in the temple of Ceres. Before this, it is stated, they had not unfrequently been falsified or supprest by the consuls[12]: so that this piece of fraud was mainly directed against the commonalty. The consuls are also said to have committed the publication of the decemviral laws to the plebeian ediles[13]. This probably means only that the last two

[810] The centumvirs: see Vol. I. note 996.

[11] See above, p. 324.

[12] Livy, III. 55. Quae antea arbitrio consulum supprimebantur, vitiabanturque.

[13] Livy, III. 55. Hence Diodorus, XII. 26, ascribes the completion of the code to these consuls.

tables were then posted up in the comitium by the side of the first ten.

The great work of legislation this year was terminated by a tribunician law of M. Duilius, denouncing death at the stake[814] against all who should create a magistrate without appeal, or leave the plebs without tribunes. This penalty threatened both the curule magistrate, who should cause the tribuneship to remain vacant by interrupting an election, and the tribune who should do so through treachery or weakness. Extreme severity was doubly necessary; since, as has been observed above, it was more difficult than before, even as a matter of form, to revive the office, if there was no member of the college to preside at the election; no less difficult than to rekindle the fire on the altar of Vesta, after it had once been extinguisht.

As freedom seemed now to be secured by the establishment of these rights, though they did not grow up to their full vigour till after a long struggle, the tribunes summoned the decemvirs one by one before the court of the plebs. For when the plebs and its tribunes were revived, this court also was recalled to life. It is a mere misunderstanding, refuted by very numerous examples, to suppose that the court, which was the only one invested with judicial powers by the Twelve Tables, was the only one that subsisted from this time forth. The sequel of this history will shew that for a long time after the decemvirate the curies as well as the tribes exercised a capital jurisdiction. The crime of Appius could not be forgiven: but his insolent defiance consummated his ruin. He might have gone into exile: but he

814 Such is the punishment mentioned by Diodorus, XII. 26: and this is indubitably more accurate than Livy's scourging and beheading. The infliction of the punishment *more majorum* did not belong to the tribunes; and death by fire was the proper one for high-treason. This law, from some cause which can hardly be explained, half repeats the second of the Valerian laws.

fancied that, even putting the worst case, he had no need to hurry his resolution; for that a tribune could not possibly arrest him: he shewed himself therefore in the Forum, accompanied by a band of young patricians, who still acknowledged him as their chief. This sight kindled the anger of L. Virginius; and he summoned him to appear forthwith before a judge, who should decide on the fact, whether as pretor he had pronounced against the possession of personal freedom: if Appius refused to submit to this decision, he threatened him with a prison and chains as acknowledging his guilt[815].

The tone of Livy's narrative implies that to him this whole matter was plain: to us it is all mysterious. What judge could pronounce on a person summoned to appear before the people on a day still far distant? and how could the prosecutor be warranted in throwing him into prison, by his refusing to appear before such a judge? The means at least for answering these questions would have been found in Gaius: but the very leaf containing his chapter on the *postulatio judicis* is lost; so that we must resort to conjecture.

It would have been idle and even ridiculous for the Roman laws to have imposed corporal and capital punishments, if everybody had been at liberty to elude them by voluntary exile. A proletarian more especially, who in cases where bail was taken might get one of his own

[815] Livy, III. 56. Unius tantum criminis ni judicem dices (read *doces*), te ab libertate in servitutem contra leges vindicias non dedisse, in vincula te duci jubebo. All the manuscripts agree in the corrupt reading, though the most perverse subtilty will scarcely undertake to defend it: my emendation is grounded on the phrase *docendus nobis est judex*, and others of the kind in Cicero, which will readily occur to every scholar: as to the present tense, the reader among other instances will remember *ocyus hinc te ni rapis.* Livy says too, III. 57, se iterum atque saepius judicem illi ferre, ni vindicias ab libertate in servitutem dederit: si ad judicem non eat, pro damnato in vincula duci jubere.

class to stand surety for him*, might have ventured fearlessly on any crime: fellows who had nothing to lose, and who, even if they had to dread the rigour of the law of debt, might run away, would not have been wanting to offer themselves for him. This would have destroyed all personal security. But such a degree of impunity was never allowed, even after the Porcian laws had been carried to the most senseless extravagance: the old times were far removed from such absurdity. On the contrary it would have been deemed a mockery of justice to institute a process where the crime was flagrant, as juries are now called to declare whether the sun stands above the horizon at noon, and, if they like it, declare the contrary. An offender openly taken in the act was led before the tribunal of the pretor[816], or, if he resisted, dragged to it, to hear and suffer his punishment. Of course the injured party, if he was able, appeared in person, accompanied by witnesses. If the prosecutor was absent, it is equally clear that the questors, who were instituted to inquire into crimes[17], took his place. But as the number of court-days was originally very small, and as it was only on these that the culprit could be carried immediately before the court, the same questor, if the arrest took place on any other day, must undoubtedly have sent him to prison, to be kept in bodily custody till the day of his sentence and punishment. Our forefathers, says Cicero, meant the prison to be a security for the punishment of notorious and nefarious criminals[18].

* Gellius, XVI. 10. See Vol. I. p. 454.

[816] It matters not under what name he filled that office.

[17] Varro de l. L. v. 14. (IV. p. 24). Quaestores — qui conquirerent maleficia.

[18] Carcerem vindicem nefariorum ac manifestorum scelerum majores esse voluerunt: Cicero Catil. II. 12 (27): by which he does not, as Muretus supposes, at all contradict the assertion of Ulpian, that the prison was a place not of punishment but of custody. For *vindex* means the same thing here as in a law-suit (see Festus, Vindex),

In our days it will sometimes happen in great capitals, that a man in utter destitution will commit a criminal act, in order to gain shelter and food in a jail. But the Roman dungeon, into which no ray of daylight entered, was a place of horrour and of extreme misery. To consign a citizen to it would have been a piece of gross injustice, unless the act he was charged with was undeniably certain, or if it could be questioned whether it fell under the law; for instance, if a homicide alledged that he had acted in self-defense. We have an instance clearly proving that the accused in such a case tendered a wager (*sponsio*), to decide which the magistrate assigned a judge out of the order capable of holding that office,—that is, before the Sempronian law, a senator,—and that by this step he gained a right to call for aid from the tribunes, if the prosecutor declined the wager. But the same instance proves likewise that the tribunes, who were answerable solely to their conscience, might even then refuse to interfere[819]. If they decided in his favour, it is evident that on finding surety he would have been discharged[20].

On the other hand the same proceeding must have afforded means for a person who brought a criminal charge,

surety given that a man will satisfy the judgement past upon him. C. Claudius deplores the fate of his nephew, *jacere vinctum inter fures nocturnos atque latrones*. Livy, III. 58.

[819] It occurs in Valerius Maximus, VI. 1. 10. The centurion, whom the *triumvir capitalis* ordered to prison, called in vain upon the tribunes to intercede, *quanquam sponsionem se facere paratum diceret, quod adolescens ille corpore quaestum factitavisset*,—and was therefore infamous, so that the crime, which he did not deny, did not come under the law. In such a case the party who demanded the wager, certainly could not name the judge: hence it belongs to the head of the *postulatio judicis*, like the wager of Scandilius: 2 Verr. III. 58, foll.

[20] I am here speaking of the legal right: in later times unquestionably the tribunes by their arbitrary interference were able to rescue even such as were convicted according to all due forms of law.

either in his private capacity or as a magistrate, to insure the infliction of the legal punishment. As this was a common occurrence, it is not surprising that we find no instance of it except in comedy, the image of common life[821]. History however records examples of a very similar procedure adopted in state-prosecutions. Such prosecutions were leveled, not so often at a particular act, as at the intentions and principles of the accused: they always left room for a defense: the court united the power of giving judgement and of shewing mercy: it was often extremely doubtful what its verdict would be: and a person, though condemned, might possess the esteem even of those who pleaded against him. In no case was it less fitting that a culprit should be cast among malefactors in a gloomy dungeon. If he was charged however with specific capital offenses, the prosecutor might tender him a wager, and name the judge[22], on the same principle on which an injured people or order sat in judgement in its own cause. If the judge declared the fact to be proved, the prosecutor sent the criminal to prison, to prevent his withdrawing from the sentence of the people. If the defendant refused to accept the wager, he was held to have confest his guilt, and so in this case too might properly be taken into custody. This decision from its nature we should term a previous trial, even if the word *praejudicium* had not been preserved, which I have no doubt in its strictest sense denoted this very proceeding. It usually determined the event of the conclusive trial[23]; not however necessarily so. Since life

[821] Plautus Rudens, III. 4. 7. Ergo dato De Senatu Cyrenensi quemlibet opulentum arbitrum Si tuas esse oportet nive eas esse oportet liberas Neu te in carcerem compingier est aequum. *Dato* is clearly not addrest to the *leno*, who certainly could not name the judge, but is spoken without reference to any particular person: *give us*.

[22] This therefore would have been a *latio judicis*, not a *postulatio*.

[23] See the instances in Brissonius and Forcellini.

therefore as well as personal freedom might be at stake, it was no act of usurpation in the tribunes to protect a person who would not submit to such a wager: the judge proposed to him might be partial. Hence Volscius was left at liberty; and his trial, together with that of Appius, proves that the practice was such as has been described[824]. If the prosecutor however was a tribune, and his collegues were unanimous, a person who did not venture to trust his fate to the sentence of a judge on a particular fact, had nothing to screen him from imprisonment.

Even a patrician, who in all other cases, where a plebeian sought aid from the tribunes, had no right to apply to them, if he was prosecuted by one of their body, which no magistrate was allowed to dispute with, might call upon one of his collegues to intercede. This was what Appius did, being seized with dismay when Virginius persisted in his summons. All kept silent: and the officers led him to prison without interruption. C. Claudius, a consular, whose innocence was above suspicion, as he had endeavoured, though in vain, to induce the decemvirs to lay down their power in the hands of the senate, and had then retired to Regillus, the home of his ancestors, shrank from no effort however humiliating to soften the commonalty, and prevail on them to release his nephew. Had this point been gained, the prisoner might have removed beyond their jurisdiction: for there could be no hope of a favorable sentence. All the members and clients of his house came with him to the Forum in mourning, ready to offer any security that might be required. He humbly entreated that they would spare his house the shame of seeing a Claudius lying in chains among murderers and robbers, and call to mind that it was unseemly for the

[824] Caeso's friends demanded that a judge should decide on their allegation that he was not in the city at the time when the murder was said to have been committed: *ni ita esset multi privatim ferebant Volscio judices.* Livy, III. 24.

republic itself, which had so recently acknowledged him as its head. But his entreaties were overpowered by the solicitations of Virginia's father, and by the anger of the commonalty. Appius died in prison, probably by his own hand, before the day of his trial, which the tribunes had put off to give him time for fixing his resolution and executing it.

A like fate befell his immediate collegue, the plebeian Sp. Oppius; who, though he was in the city at the time of the sentence against Virginia, had given her no assistance; and who had continued to carry on the government after the insurrection broke out, and had resisted the insurgents as rebels. On the evidence of an old soldier, whom, after seven and twenty years of service[825] in which he had never incurred blame, Oppius had ordered to be scourged, without a plea to alledge for it, he was sent to prison, where he too killed himself. The other decemvirs were left at liberty; as was M. Claudius, the slavish tool of the crimes of Appius. They were all suffered to go into exile, but were all declared guilty; and the property of the decemvirs was confiscated[26].

All who felt themselves guilty or objects of hatred, now lookt forward with alarm to further impeachments. But M. Duilius declared he would allow of none on account of acts done under the government of the decemvirs. This moderation however did not restore concord. The patricians no sooner felt secure, than they sought to revenge themselves for having been frightened.

The consuls returned from their campaign with extraordinary glory. The conscripts had been eager to come forward: even veterans, whose years exempted them fiom

[825] That is, all the years included in the age of the *juniores*, within one,—a number that looks ill for the historical credibility of the story.

[26] The words, *ipso remittente Virginio ultimam poenam*, do not mean that Virginius accused him of anything short of a capital crime, but that he allowed him an opportunity of escaping.

service, formed cohorts of volunteers: and old and young vied with each other in the field to win brilliant triumphs for their beloved benefactors. Though two several armies had both gained victories, one of which paved the way for so firm a peace with the Sabines, that for above a hundred and fifty years they maintained an unbroken friendship with Rome, the senate only appointed one day of festival. The people would not be prevented from celebrating a second, as it ought to have been ordained, in all the temples. During these thanksgiving days the armies returned, and encampt before the city on the field at the foot of the Caelian. The consuls, according to usage, summoned the senate to the temple of Mars, before the Capene gate, in order to give an account of their campaign, and demand a triumph. But the senate refused to pass any decree, because their deliberations were not free while surrounded by armed troops[827]. The assembly was then transferred to the temple of Apollo, near the site afterward occupied by the Flaminian circus[28]: and now the honour, so well deserved by the consuls, was denied them almost unanimously, as not meet for such traitors. A formal right is exposed to greater danger by its unscrupulous abuse, than by any hostility from without. The commonalty could not take on itself the initiative with regard to a triumph, without infringing the law as it stood: the proposal of L. Icilius to the tribes, that they should award it, against the decision of

[827] Livy here again confounds the two *Campi* (see note 608): there was no place in the Field of Mars where the senate could be held; and the Flaminian Circus lay just by it. On the other hand the temple of Mars, where the senate was usually convoked by generals on their return from a campaign, stood on a lesser field, which seems to have belonged to the plebs, as the larger did to the populus, and was separated from that circus by the whole length of the city.

[28] In Livy, III. 63, there have been two readings: *circum, jam tum Apollinarem appellabant*, and *jam tum Apollinar* (or *Apollinare*) *appellabant*, without *circum*. Much may be said in favour of each: but the received text is decidedly good for nothing.

the senate, unquestionably overstept their legal powers; even if the temple of Ceres was to defray the charge. This the senators would naturally urge at the meeting. The reproaches put in their mouths by the historians are the natural language of men who feel that they are speaking in vain: *we well know that the victory, which the commonalty and their consuls mean to celebrate, is the one they have gained over the patricians.* So long as such resentment prevailed, the possibility of any agreement about the constitution was more remote than at the time of the secession: and no expedient suggested itself for the moment, save to renew the provisional regulation of the year that was closing. But the consuls of this year had been sent by heaven to restore the freedom of the state: no others could make amends to the commonalty for them. Nevertheless had this conviction induced Valerius and Horatius to set themselves above opinion, it would have been no less impossible to get the assent of the patricians to such an election, than if the classes had chosen two plebeians: the honour would only have exposed them to insult for no purpose. All that the commonalty could do for Valerius, it did, by investing him with the office of questor at the first election in which the centuries had the disposal of it. Possibly too it may often have happened that votes tendered for the two friends of the people were rejected by the presiding consuls: or, if an impartial magistrate acted otherwise, and they were duly returned, the curies may have refused to confirm them.

Such free states as are not mere aggregates of individuals, changing their character and sentiments with every outward impression and momentary impulse, owe this steadiness mainly to the subsistence of houses and corporations, in which principles and feelings are transmitted for ages as an heirloom from generation to generation. Were a Russell to prove false to the principles of 1688, he would be deemed a shocking instance

of unnatural degeneracy. But above all other nations did the Romans maintain this unity between forefathers and their posterity; so that the life of a house in the republic was like that of one man: the descendant received the principles of his ancestor as a law, and his plans as a trust that he was charged to execute. More than four hundred years after C. Sicinius founded the tribunician authority, a tribune of the same name was the first person who dared to demand it back from Sylla. C. Licinius, one of the tribunes created on the Sacred Mount, must probably have been the ancestor of the Licinius Stolo, by whom four generations afterward the honour of the plebeian order was establisht. The Maenius, who first ventured to call on the usurping nobles, to carry the agrarian law into effect, was probably an ancestor of the one, who nearly two centuries after deprived the curies of an important power, when its abuse was daily growing more insupportable: and the dictator Q. Publilius, by whose law the independence of the plebeian legislature was matured, descended, we know, from the tribune Volero. So long as the rights of the plebs needed protection, the Valerii were never untrue to them: above all, they held it to be the hereditary charge of their house, to renew and keep alive the laws securing the personal inviolability of every citizen. Oftentimes, when plebeians are chosen as military tribunes, or when, after a violent interruption of the Licinian law, a plebeian is again elected consul, we find that a Valerius was in office the year before: so we may presume that it fell to his lot to preside at the election, and that he used his power in restoring the rights of the plebs.

The Horatian house becomes extinct in history two generations after the conqueror of the Sabines. In the Valerian, after the end of the republic, we find Messalla, the worthiest man of his age: and with the Cornelian it outlived all the other patrician houses, retaining its lustre, though not indeed in the degraded Fasti, until

the Roman nation expired. The father of the prefect Symmachus, in enumerating the first men of the senate, of whose friendship he was proud, mentions a Valerius Proculus, as a person worthy of the old Publicolas, and not opprest by the greatness of his ancestors; and he extolls his love of truth and justice[829]. No one indeed, however praiseworthy amid the wreck of Rome in the last stage of its decay[30], can at best have been more than a faint image of his ancestors: but at all events this house was not visited with any peculiar degeneracy, independent of those vicissitudes which raise or depress a whole nation. And if the descendants of Publicola and Messalla felt too much pride in their ancestors, they were already receiving their punishment: for as appears from the versified account given by Symmachus of his eminent contemporaries, through which we become acquainted with the last Valerius we ever hear of, by the grandees of the age of Theodosius the plebeian nobility of the Anicii of Praeneste was deemed more illustrious than the patrician blood that had flowed for a thousand years in the veins of the Valerii and Cornelii. Yet the Anicii could not boast of a single name comparable even to the least of the great men who sprang from those two houses. What raised them to this preeminence in public opinion, was their immense wealth, and the possession of empty honours during the decline of the empire. The empire sank: the property of the rich was shared among their conquerors: whatever remnant of the native nobless survived the extermination of the senators, even though they were Anicii, became so poor and opprest, that they even lost the memory of their rank: the Roman barons of the middle ages are all necessarily of a barbarian race[31].

[829] Symmachus, Epist. I. 2. [30] Symmachus, I. 4.

[31] The revolution which overthrew the decemvirate took place in December 305: the tribunes entered into office on the fourth day

before the Ides of that month; and from the very nature of the tribuneship it follows that after its restoration no college can have retained it a single day beyond or short of a year. This date is confirmed by the statements that in the years 312 and 355 the consuls entered into office on the Ides of December (Dionysius, xi. 63. Livy, v. 9): for in 305 they were elected immediately after the tribunes were instated.

At this epoch Cato's Fasti and those followed by Livy diverge from those of Varro, the latter counting the last year of the decemvirate and the first of the new consuls as only one, the two former as two; and evidently with good reason: beside which their mode has this advantage, that the physical year coincides for a time with that of the Fasti.

CIVIL COMMOTIONS DOWN TO THE CONSTITUTION OF 311.

THE old commonalty was no less anxious for the reelection of the tribunes than of the consuls: nor could the former be prevented by any interference from without. But M. Duilius, whose lot it was to preside at this election, declared that he would take no vote either for his collegues or himself. This resolution was met by one equally firm on the part of the old plebeians, not to vote for anybody except the tribunes who were going out: and their superiority in number to the newly admitted tribesmen was so decided, that the latter, and such individuals as may have joined them, could not supply more than five candidates with the requisite votes in the majority of the tribes[832]. Now it being necessary that all proceedings of the plebs should be completed in one day[33], an election which had not furnisht the full number might have been held void; and those who were desirous to carry the reelection of the late tribunes insisted that it ought to be so. Duilius on the other hand maintained that it was enough if there were any tribunes elected to begin the new year, and that these had a legal

[832] For this to have been possible, we must suppose that the genuine old plebeians obstinately refused to vote, or that their votes for the old tribunes were not counted, that an absolute majority was necessary, and that the votes for all but the five successful candidates were frittered away.

[33] See p. 215, note 486.

right to fill up the vacant places[834]. The people was forced to acquiesce in this decision: but the majority of the new tribunes, as might have been lookt for from the mode of their election, were so entirely devoted to the patricians, that, among the new members with whom they made up the complement of their college, two were taken from that order,—Sp. Tarpeius and A. Aternius; to whom however, it is true, the commonalty was indebted for their law to regulate fines.

This account is deduced from Livy: and it would sound credible enough, were it conceivable that Duilius could carry his private determination into effect against the will of his collegues, at a time when questions were settled by the majority; or that the charge of presiding at the election would be given to a person directly opposed to all the rest on the matter the decision of which was thus placed in his power. As on these grounds it can scarcely be doubted that Duilius on the contrary acted in unison with the majority of his collegues, so we may conjecture that the purpose of his measure has been misrepresented. What if the two consulars were not the only patricians in the secondary list, but merely escaped oblivion from having distinguisht themselves on other occasions? What if the plan was to make the tribunate represent the whole nation now united in the tribes, and to divide it, like the decemvirate, between the two estates? what if it was deemed the most expedient method of doing this, — as in the first instance at least it unquestionably would be,—to entrust five plebeians elected by the tribes with the power of filling up the other five places? This to all human appearance was a security that no violent persons

[834] According to the text in Livy (III. 64) he appealed to an existing law: *satisfactum legi aiebat, quae—sanciret, et—cooptari collegas juberet.* The last word can scarcely be an errour of the scribes; yet the sense requires *jubebat:* for this is what Duilius proposes. The mistake may have been an oversight either of the writer himself, or of some corrector of a manuscript.

would be chosen, no wolf let in to guard the flock, as might have been apprehended from an election by the curies. Such a resolution would imply an agreement beforehand that the decemvirate was to be introduced in the form previously ordained. Now if we reflect that the tribunes went out of office on the tenth of December, the consuls not till the thirteenth, and that the latter held the election of their successors in the very last days of their office, we may see that the five plebeians might very easily appoint their collegues, before the senate issued its ordinance directing that consuls and not decemvirs should be elected. This would have been a crafty stroke, and a perfectly successful one.

Though this explanation cannot lay claim to anything more than probability, it is beyond all doubt that the question in dispute was, what share the plebeians were to have in the decemvirate: for, considering their relative condition, the exclusive possession of the tribunate, together with a full half of the supreme magistracy, would have been too much. To secure them this exclusive possession was manifestly the purpose of the ordinance which L. Trebonius, one of the five elected tribunes, got past in 307; that the person who presided at an election of tribunes, was to continue it until the full number of ten was made up[835]. The meaning of this is, that, if an election was not concluded before sunset, it was to be valid so far as it had gone; and we may conjecture that it was not necessary to wait for the third market-day to finish it.

On the other hand I should incline to suppose that the judicial questorship was left to the patricians; since this year, the sixty-third after the banishment of the

[835] The law in Diodorus, XII. 25, which ordains under penalty of the stake that the full number of ten tribunes was always to be elected, is no other than this of Trebonius: there cannot have been such a law previous to the election at which Duilius presided.

Tarquins, was the first in which the centuries appointed to that office; but that this regulation, if a permanent one, would imply that the breaking up of the decemviral college had already been determined upon. Perhaps this office, like the consulship, may have been entrusted provisionally to two patricians. As to its functions, it was the same that was to have formed a part of the decemvirate[836]: the election was free: the centuries elected L. Valerius Potitus, along with Mam. Aemilius, one of the most eminent and best-disposed men of the day. Even before the decemvirate, consulars had not thought this office below their dignity; though its principal functions were comprised in the melancholy duty of the *triumvir capitalis*[37].

The consuls of the years 307 and 308 avoided all disputes with the tribunes. But the patricians of the younger houses, which are mentioned here for the last time, provoked and maltreated many of the commonalty, and even the tribunes themselves when they interposed; while those of the old houses, though they took no part in their misdeeds, would not let them be punisht[38]. The next year many persons were prosecuted before the people for such offenses: the old state of affairs was completely revived: it was expected that the tribunes would stop the levies. But when the Aequians were tempted by this prospect to make an inroad into the Roman territory, they found themselves mistaken. The year 310 brought on a crisis. Nine tribunes gave notice of a bill for electing one of the consuls from each order; one of them, C. Canuleius, of another bill to legalize marriages between the orders. Livy's account of the angry opposition with

[836] Above, pp. 325, 326. On the twofold mistake made by Tacitus and Ulpian, in confounding the *quaestores parricidii* with the *quaestores classici*, and fancying that the former were appointed at first by the kings, and then till 307 by the consuls, see Vol. I. p. 525.

[37] Varro de l. L. v. 14 (IV. p. 24).

[38] Livy, III. 65: a very important passage.

which the patricians met this proposal, is unquestionably a faithful picture of the sentiments of the haughty nobles of his own day; and the deep resentment he puts into the mouth of the tribune is his own feeling. It is impossible however that all the patrician houses of the age he is describing can have lookt down with such contempt on the distinguisht plebeian families. Cn. Cornelius and P. Licinius were brothers[839], and were probably born before the passing of the Canuleian law[40]. As the obstacle to these marriages turned in fact upon the auspices, they may more properly be termed mixt than unequal. All prudent men must have perceived that the prohibition of intermarriages was undermining the patrician order: nor can they have overlookt that its most violent enemies were the men, sprung from it by marriages which, though forbidden, were still contracted, whom their birth excluded from it. Such was the case in the early ages of Greece with Cypselus and many other demagogues and usurpers: and the most resolute leaders of the Roman plebs, Sicinius, Genucius, and Virginius himself, must have been allied to the patrician houses of the same names. Accordingly the Canuleian ordinance received the assent of the patricians. The speech made by its mover in the senate against the levy by which the government wanted to hinder the passing of the bills[41], shews that the tribunes were then admitted into the senate-house; which is manifestly a newly acquired right[42], and is connected with the regulation that the ordinances of the senate were to

[839] Livy, v. 12.

[40] If Livy's narrative could be relied on, according to which (v. 18) Licinius Calvus, the military tribune of the year 359, was the son of the one mentioned in the text, and the latter was at that time an old man, this would be certain: but the newly discovered fragments of the Capitoline Fasti represent him as the same person who filled the office in 355.

[41] Pauca in senatu vociferatus: Livy, IV. 1.

[42] Icilius indeed had appeared before the senate; but this was

be deposited in the archives of the ediles. The seats of the tribunes during a debate were on benches before the doors of the senate-house, which stood open[843]. Thus the plebeians had access by their representatives to the deliberations of the senate, but without a vote; as the deputies of the guilds in the thirteenth century were permitted in many cities to attend meetings at the town-house, long before they obtained seats in the council[44].

The first bill, that relating to the consulship, was subsequently altered, so as to leave both places open to both the orders without distinction[45]. The look this has of an advance in the demands of the commonalty is wholly deceptive. On the contrary it was to be foreseen that the arbitrary power of a patrician president, and the influence of his order in the centuries, would render the right thus conceded abortive, unless it was enjoined that one of the consuls must necessarily be a plebeian. This alteration therefore was a step backward. It was just like what happened at the doubling of the questors of

under different circumstances: any person might have done the same, though having no access to that assembly otherwise: Dionysius, x. 31, 32.

[843] Valerius Maximus, II. 2. 7. The position of the benches implies that the doors must have been left open.

[44] And those of the Polish towns by the constitution of 1791.

[45] Livy's statement (IV. 1), according to which the demand at first was only that the plebeians should be eligible to one place, and was afterward raised so as to leave the right of electing wholly unrestricted, is grounded on a misunderstanding, which the facts of the case are sufficient to correct. These bills are also spoken of by Diodorus, who however is entangled in a maze of errours: for he supposes them to have been legally enacted, and places them immediately after the abolition of the decemvirate: not to mention that at this period the centuries cannot as yet be properly called a *δῆμος*, and that he does not understand the way in which the events hang together: XII. 25. *Τῶν ὑπάτων τὸν μὲν ἕνα ἐκ τῶν πατρικίων αἱρεῖσθαι, καὶ τὸν ἕνα πάντως ἀπὸ τοῦ πλήθους καθίστασθαι. ἐξουσίας οὔσης τῷ δήμῳ καὶ ἀμφοτέρους τοὺς ὑπάτους ἐκ τοῦ πλήθους αἱρεῖσθαι.*

the treasury, when, the tribunes having demanded that the places should be shared between the two orders, the interrex got them to agree that they should be filled indiscriminately from either[846]. This concession however did not appease the patricians. The most violent passions were excited[47]: the heads of the senate held secret consultations; and C. Claudius advised them to murder the tribunes[48]. Others thought that this would be too horrible, or too desperate a step. At length a compact was concluded between the leaders of the senate and the tribunes, substituting a new constitution, which for brevity's sake I shall call that of 311, in the room of the decemviral one. Of this compact our historians know nothing. Nevertheless it certainly took place, and was undoubtedly drawn up, like the Greek treaties of peace, in the form of a law, as an ordinance of the senate and curies, adopted by the commonalty, like that by which the censorship is related to have been establisht[49].

Nor are they aware of the connexion between the censorship and the military tribunate, or that these two offices together were equivalent to the consulship: according to their view the censorship was instituted to meet a casual necessity. The spirit and import of the compact however, when the matter is considered without prejudice, will not admit of a doubt. The decemvirate was resolved into its three component offices, which now stood completely separate from each other. Of these the censorship and the questorship were reserved for the patricians: the former was to be bestowed by the senate

[846] Livy, IV. 43. The tribunes demand, *ut pars quaestorum ex plebe fieret:* the interrex mediates: *mediis copularent concordiam — trib. pl. non intercederent quominus* IV *quaestores promiscue de plebe ac patribus—fierent.* Hereupon the election of any plebeian is constantly prevented for several years.

[47] Πολλὰ κατ' ἀλλήλων καὶ βίαια ἔλεγόν τε καὶ ἔπραττον. Zonaras, VII. 19.

[48] Livy, IV. 16. [49] See note 506.

and the curies, the latter by the centuries. The military tribunate was reduced from a body of six to one of three: and instead of its being equally divided between the orders, both were made eligible indiscriminately. The mischief threatened by this provision cannot have eluded the notice of the plebeians: but all these concessions were wrung from them, because they retained exclusive possession of the tribunate. Their conviction that the patricians would take advantage of any share they might get in that office to destroy it, must have been very deeply rooted, since no further attempt was made to preserve the decemviral constitution at such a price.

THE CONSULAR MILITARY TRIBUNATE.

A CORRECT notion of the constitution of 311 will lead us to acquit the patricians of the charge of setting a great value on the show of excluding the plebeians from the consulship, while they granted them the substance[850]. Dion tells us that no consular military tribune, though several of them gained brilliant victories, ever celebrated a triumph[51]. Hence it follows that they cannot have had the curule honours[52]: for a triumph, properly so called, is termed *triumphus curulis*[53]. This epithet assuredly refers to the privilege of the supreme magistrates to go to the senate in a chariot[54]; an honour not allowed to the

[850] Zonaras, VII. 19. Τοῦ μὲν ἔργου παρεχώρησαν, τοῦ δὲ ὀνόματος οὐ μετέδωκαν.

[51] Zonaras, VII. 19.

[52] Livy's assertion, IV. 7, *imperio et insignibus consularibus usos*, is one of his pieces of inadvertency.

[53] Beside the passages quoted in the dictionaries, the monument of Ancyra has (*tres egi*) *curules triumphos:* Oberlin's Tacitus, II. p. 587.

[54] Festus, Curules and Isidorus, XX. 11. If this privilege ceast with the office, it may have been specially granted to Metellus, when he had lost his sight, as a mark of distinction: see Pliny, VII. 45. The expression of Gavius Bassus in Gellius, III. 18, *qui curulem magistratum gessissent* is erroneous: it ought to be *gererent*. I conjecture that a dictator was not only entitled but enjoined to use a chariot: and that it was for this reason, and not because he was bound

consular tribunes, because they were not of curule rank. In like manner no master of the horse ever triumpht: nobody ever supposed that his was one of the curule offices; and the consular tribunes were not above him in rank[855]. One may easily conceive that the office, when thrown open to the plebeians, would be shorn of its dignity: if its power however had continued the same, the advantage the consulship had over it would merely have been matter of vanity.

The most remarkable feature of this tribuneship is the variableness in the number of its members: for this in all the other offices of the ancient states was permanently fixt, and did not alter with the shifting of circumstances, as in modern monarchies. From 311 to 323 this magistracy occurs five times in the Fasti; and each time they give three names[56]: from 329 to 349 we find eleven or twelve boards, consisting of four, and three or two of three members[57]: afterward, as often as such tribunes are elected from 350 down to the Licinian law, there are never fewer than six: but in three instances we meet with eight[58]. The first of these has been fully

to lead the legions on foot, that a law was requisite to allow him to mount on horseback: see Livy, XXIII. 14, and his commentators. The practice is alluded to in the *versus quadratus, Dictator ubi currum insedit vehitur usque ad oppidum*, as far as the city-walls (see Varro, v. 32, p. 37), when he is going to take the field: there he mounts his horse. The pomp of Romulus in his chariot was celebrated in the legend: on the other hand it is recorded as an instance of Trajan's *animus civilis*, that he walkt in the city on foot.

855 Livy, VI. 39. A consular tribune is appointed master of the horse: no consul ever was so.

56 For we must suppose that there were three tribunes in 321, as we find in Diodorus, XII. 53: the same consuls cannot possibly have been elected two years in succession: Livy, IV. 23.

57 The doubtful board is that of 333. See note 869.

58 In 352: Livy, v. 1: 376. Ol. 102. 1: 377. Ol. 102. 2: Diodorus, XV. 50, 51

discust by Perizonius, who has shewn that the last two names among the eight were unquestionably those of the censors for the year, but that Livy so decidedly considered these as members of the tribunician college, that he reckons this year among the tribuneships of M. Camillus[859]. The case is precisely the same with the other two instances, which have never been examined, owing to the contemptuous neglect of everything contained in Diodorus with regard to the early history of Rome. The year 375 was the first of a censorship; and in the list of tribunes in Diodorus, completely disfigured and mutilated as it has been by the transcribers, we at least find the name of C. Sulpicius, who appears as one of the censors in Livy: while in the next year, when we have the eight names complete, C. Genucius and P. Trebonius are the censors, who were chosen in the room of those of the preceding year, but, their election being declared invalid, were obliged to resign[60]. During this period the censorship occurred very rarely: as often however as it stood alongside of the military tribunate, it must have been similarly lookt upon as united with it, so that on such occasions there were held to be eight tribunes[61]. It is merely a slight exaggeration when it is said that this number was a common one[62].

[859] Perizonius, Animadv. 2. p. 46. foll.

[60] Livy, VI. 27. His placing the resignation of the first censors, and the election of the second, under the year 376, is a mere oversight.

[61] The names of the censors for 378, as given by Livy, VI. 31, it is true, do not occur in Diodorus (XV. 57): but, as is proved by the forenames of his tribunes compared with those in Livy, his list is imperfect, probably owing to the illegibility of the manuscript our text is derived from: the statement that there were four tribunes in that year, probably comes from the hand which has disingenuously plastered over the traces of all the gaps in Diodorus.

[62] See the passages from Livy himself, and from the speech of the emperor Claudius, in Perizonius, p. 47.

It will be seen further on that the censorship at this period was very much inferior in dignity and power to what it was either before or after. All that we need notice here, is, that the persons invested with it were reckoned among the tribunes, though not strictly belonging to their body. But during this same period the duties of the tribunate were not confined to commanding in the field. The usual practice was to send out two armies, each under two military tribunes[863]: of the two who staid at home, one, as is distinctly stated with regard to the year 369[64], would fill the post of warden of the city; the other, as commander of the reserve composed of the veterans and of persons exempted from ordinary service, stood in the place of the ancient proconsul[65]; whether these offices were assigned by lot or by agreement. The pretorship of the city however was so far from being included among the places thrown open to the plebeians by the constitution of 311, that even for a whole generation after the Licinian law it remained in the exclusive possession of the patricians. Indeed how could it be otherwise, when the appointment of judges, and the maintenance of possessions in the public domains, were among the functions of that office? While the other five places therefore, as being merely military, might be conferred on either order, this one must have been reserved to the patricians: that it was so in 355 and 356, is manifest: nor in fact was it otherwise in 359, the only year in which the tribunes in Livy's Fasti are all plebeians[66].

863 In the years 360, 364, 369, 372, 377, 378, Livy, v. 24. 32. vi. 6. 9. 22. 31, 32, 33. Compare v. 6. 18. 28. vi. 23. 30.

64 Te, Ser. Corneli, praesidem hujus publici consilii, custodem religionum, comitiorum, legum, rerum omnium urbanarum, collegae facimus. Livy, vi. 6.

65 See above, pp. 121-123.

66 For instead of P. Maenius, the new fragments of the Fasti and Diodorus, xiv. 90, have Q. Manlius.

In like manner before the number of the tribunes was raised to six, this pretor must have been distinct from them: and since at that time, whenever we find four tribunes, it was and must needs have been the rule, for one of them to take charge of the city as prefect, while the others were absent in the field[867], it would be idle to doubt whether this fourth, who must have exercised the pretorship of the city in its full extent, was necessarily a patrician: a question indeed which never arose, because the patricians almost always succeeded in excluding the plebeians altogether. Properly speaking however, he was no more a military tribune, than the censors were afterward: he was only a collegue of the tribunes[68], and the vicegerent of the censors. Had not Mamercus Aemilius shortened the term of the censorship, so that there were to be no censors for three years and a half in every lustre, no colleges previous to the alteration in 350 would contain more than three tribunes: nor did they, under the constitution of 311, until the Aemilian law came into operation. Whenever there were censors as well as military tribunes, there was no need of any pretorian vicegerent. Hence in 337 we only find three consular tribunes; because in that year there were censors, as is proved by the fragments of the Fasti: and this trace is a safe guide even where those tables are wanting, which it is to be hoped, will hereafter be discovered. The year 347, in which likewise there are only three names, is separated from 337 by two lustres, and from 352, which also has censors, by one[69]. In the

[867] In the years 329, 331, 349: see Almeloveen's Praefectural Fasti. Ap. Claudium praefectum urbi relinquunt: Livy, IV. 36. Cossus praefuit urbi: IV. 31.

[68] As the pretor was the collegue of the consuls.

[69] Hence the year 333 is the second of a censorship: since that office therefore was vacant during the last six months, it seems that Livy must have omitted the collegue of the tribunes in the list of

years when the Fasti have four tribunes, there assuredly were no censors.

I have gone backward from the latest period of the military tribunate to its origin, in order to give a clear solution of the perplexing variation in its numbers: I shall now take the opposite course, and point out the changes in its nature in the order in which they occurred.

I need not repeat that it was originally instituted as a part of the decemvirate. By the constitution of 311 the number of its members was reduced to three, who might be chosen out of either order: for the patricians trusted that the power of the presiding magistrate, and the controll of the censors over the lists of electors, would enable them to exclude the plebeian candidates; an expectation in which, after the first election, they were not deceived. Whether consuls or military tribunes were to be appointed, was always decided by the senate. It preferred the former; because in their case votes for a plebeian might be peremptorily rejected without trouble or annoyance: when however it was forced

this year; and thus the conjecture of Sigonius, that the name of L. Servilius is wanting in IV. 42, who in IV. 47 is said to have been military tribune once before, would receive a confirmation its author cannot have foreboded. The wardenship of the city, like the censorship after 350, was reckoned a part of the military tribunate, not however in all the Fasti. I scarcely know anything more delightful, than to be able to furnish a proof in support of a conjecture made by former scholars, the truth of which was clear to them, though inferior men were not satisfied of it: it is paying off our debt to them after the lapse of centuries: I too may hope that some will regard me with like feelings hereafter. It is a pity that the Fasti for this year are wanting, and that Diodorus omits its tribunes, together with the magistrates of three other years, for the sake of making the Gallic invasion correspond with Ol. 98. 1. Though the law of Mamercus Aemilius for abridging the censorship was past in 321, still it could not affect the censors then in office, and did not prevent C. Furius and M. Geganius, even if they were created in 320, from retaining their jurisdiction in 322 and 323.

to permit the election of tribunes, after the passing of the Aemilian law, and there were no censors, their place was supplied by a warden of the city, who in like manner was necessarily a patrician.

The year 350 is the commencement of a totally different magistracy under the same name. The pretorship was separated from the censorship, and united with the tribunate: it was reserved to the patricians, though regarded as one of the places in the tribunician college, which was restored to its original complement of six. The other five were open to both orders without distinction, as the three of the previous tribunate had been already: on one occasion only did the equal division originally prescribed take place. Of these five one had the command of the reserve, whenever it was found necessary to assemble it. Now as the internal constitution of the college was so totally changed, there cannot be said to be any decided improbability in Livy's statement, which speaks of the prerogative tribe, and of the others as being called up in their order, at the election of the year 359[870]. Since the voice of the tribes was continually gaining fresh importance in the state, and their ordinances, when confirmed by the curies, like those of the centuries became law, the election may certainly have been transferred to them: and as a number of concessions were at this time made to the people, among the rest it may have obtained a mode of election which seemed better secured against abuse than that by the centuries. Still this statement cannot be relied on as certain, being inseparably connected with the very doubtful story, which makes the Licinius Calvus, who was tribune in the same year, the son of the first consular tribune of that name. But whatever may have been the mode of election, it was undoubtedly applied to the censors likewise, who at this time were held to be collegues

[870] Livy, v. 18.

of the tribunes: and if it be true that a Trebonius was elected censor in 376[871], there needs no proof that it cannot have been by the curies.

[871] Diodorus, xv. 51. The Trebonii were plebeians: the partition of offices effected in that year was extended to the censorship: and this was manifestly the cause why the censors were compelled to resign.

THE CENSORSHIP.

I HAVE already intimated that by the constitution of 311 the censors were chosen by the curies: of course the centuries had to confirm the election. Hence in aftertimes the strange anomaly, that at the appointment of censors the latter assembly voted twice over[872]. This cannot have been the case from the beginning: but when the election came to be taken away from the patricians, the previous practice of having it confirmed by the centuries might still be retained as an unimportant formality: to have transferred it by way of exchange to the curies would have been a hazardous measure, and directly adverse to the spirit of the age. Nor in like manner would the curies, before the time of Servius Tullius, have voted twice on the same king, if the assembly that elected him had from the first been, as it was after the time of Tarquinius Priscus, the same with that which confirmed the election; whereas the latter had originally been a much larger body than the former[73].

The regulation that the censors were to be appointed by the curies, was the same which ever since the compact of 272* had been in force with regard to the higher

[872] Cicero against Rullus, II. 11 (26). Majores de omnibus magistratibus bis vos sententiam ferre voluerunt. Nam cum centuriata lex censoribus ferebatur, cum curiata ceteris patriciis magistratibus, tum iterum de iis judicabatur ut esset reprehendendi potestas.

[73] See Vol. I. pp. 341, 342. * See p. 188.

place in the consulship, applied to what was far the most important half of the consular power. After the pretorship was severed from this half in 350, it became a matter of much less moment to the patricians to maintain the exclusive right of conferring the censorship, provided that, so long as the censorship was connected with the military tribunate, they had that of rejecting the candidates. On the pretorship all that is necessary has been said above*: here I have to explain the nature and the functions of the censorship properly so called.

These functions were originally, administering the property and the revenues of the republic, in the capacity of an exchequer-chamber and a board of works, registering the citizens according to their orders, as knights, common freemen, and erarians, and keeping the landtax-rolls. Such an office, so long as it did nothing more than take care that the clerks performed their duties faithfully, though necessary, was without dignity or weight: and if Livy remembered that at this period the revenues from the public lands consisted merely of agistment at the utmost, so that neither the farming nor the expenditure of them could be matters of much importance, while he was not aware that the censors functions included those of the pretor, he was fully justified in saying that the office in itself was an insignificant one. Nor is he less correct when he adds, that it was no doubt perceived how powerful it was sure to become in the hands of men of eminence[874]; that is, by enabling them to determine the rank of the citizens, and the valuation of taxable property, at their pleasure. This discretionary authority may perhaps have begun immediately on the creation of the office: and it grew continually, and the more rapidly so as the ancient

* See p. 392.

[874] Futurum credo rati, ut mox opes eorum qui praeessent ipsi honori jus majestatemque adjicerent: IV. 8.

institutions became unsound, and gradually ceast to be replaced by others better suited to the times; until the censors, when the civil frame had fallen to pieces, ruled with a despotical power, which was regarded with hatred, though allowed to be indispensable.

The censors were empowered to enroll members in the senate, the equestrian order, and the tribes, and on the other hand to exclude the unworthy[875]. In ancient days a person struck out of the roll of his tribe was forced to take his place among the erarians, or in the register of the Caerites[76]: but when in course of time a distinction was made between the tribes of higher and lower rank, he may have gone down into a less respectable one. A scandalous offender indeed was assuredly always punisht with civil degradation by the laws of Rome, as he was with *ἀτιμία* at Athens: the very notion of a *judicium turpe* implies that this was its effect. A guardian or partner convicted of fraud, a perjured witness, a thief or robber, and other criminals of the kind[77], forfeited their civil rank, and were expelled from their order and their tribe by the sentence which pronounced them guilty. In such cases the censors merely executed the judgement of the court. So again, when they struck out a man who had chosen a degrading occupation, or been turned ignominiously out of the army, they assuredly could not restore such an offender to his civil rank, even

[875] Zonaras, VII. 19. *Ἐξῆν αὐτοῖς—ἐς τὰς φυλὰς καὶ ἐς τὴν ἱππάδα καὶ ἐς τὴν γερουσίαν ἐγγράφειν—τοὺς δ' οὐκ εὖ βιοῦντας ἀπανταχόθεν ἐξαλείφειν.*

[76] The spurious Asconius quoted in note 1085, Vol. I. In one point at least he is wrong, when he confines the disgrace of being transferred among the erarians to the plebeians. What Gellius, IV. 12, calls *aerarium facere*, he in another place (XVI. 13) expresses by *in tabulas Caeritum referri jubere* (by the clerks).

[77] Cicero pro Cluent. 42 (119): Turpi judicio damnati in perpetuum omni honore ac dignitate privantur. On this *judicium* see the passages collected in Brissonius under *Turpis*.

with their united voice. But the case was different when they acted on their private conviction of a man's unworthiness, and not in execution of a judicial sentence. A censorian brand of this kind was certainly not judicial, and in numberless instances was removed either by the collegue or the successor of the censor who had imposed it[878]. It might be inflicted for sundry acts, degrading either in themselves, or from the sentiments that gave birth to them, but such as could not be punisht by the tribunals, or scarcely ever came before them, and which it was left to the censors to correct. The client to whom an unprincipled patron had broken faith, the slave whom his master treated with cruelty, could only call on heaven for redress: but if censors like Cato or Flaccus heard of the wrong, they stript the offender of his civil rank. Excessive harshness or indulgence in a parent toward his children, the vexatious treatment of an innocent wife, the neglect of parents, selfishness between brothers or sisters, drinking-bouts, the seduction or abandonment of the young, the omission of sacred rites and the honours due to the dead, in short every offense against propriety and the public good came under the cognizance of the censors[79]. One of the offenses in this last class was luxury; and the most celebrated stories of censorian rigour relate to the punishment of this in men of high rank, at the period when the love for the simple manners of old times came into conflict with the temptation to forsake them. Capricious celibacy, and invalid marriages were branded, as keeping the state poor in citizens[80]:

[878] What Cicero says, pro Cluent. 42 (119), on the difference between a censorian brand and the consequences of a *judicium turpe*, is most strictly correct, and will now be intelligible.

[79] This is stated by Dionysius,—exc. Mai. 64. ed. R. (p. 97. ed. Frankf.)—with a precision which leaves no room for doubt.

[80] This must no doubt be the meaning of the phrase, *uxor liberorum quaerendorum causa*.

and so undoubtedly was the exposing a child, unless it was deformed. A plebeian was bound to be a husbandman: if he renounced this calling, and betook himself to a retail-trade or handicraft, he renounced his order likewise[881]; and it was the censor's duty to strike out his name. If a man let his field or his vineyard run wild, he shewed himself unworthy of his order, and of the property entrusted to him by the state, and so was removed from his tribe[82].

On the same ground it was but fair on the other hand that an erarian, who chose the station of a countryman, should be registered in the tribe in whose region he had bought land: and if Appius Claudius had merely incorporated such persons in the plebs, and not the populace of the city, no reasonable objection could have been made even to the admission of freedmen. But he placed everybody indiscriminately in one or other of the tribes. Here the absoluteness of the censorian power shews itself in its highest excess: for the regulation by which Fabius Maximus checkt this evil*, was sometimes abandoned, sometimes revived, sometimes straitened still more: nay the register of the tribes was subjected in 569 to a general revision.

But though the censors could thus arbitrarily enlarge or abridge the rights of a Roman citizen, there is no instance of their having been authorized to bestow or take away the franchise itself. When they admitted foreiners to be assest, it was by virtue of a privilege conferred by the Roman people: and they could not degrade an erarian lower. Nor is it conceivable that they acted

881 Οὐδενὶ ἐξῆν Ῥωμαίων (he has forgotten the erarians) *οὔτε κάπηλον οὔτε χειροτέχνην ἔχειν βίον.* Dionysius, IX. 25. There can have been no other punishment than the censorian brand.

82 Gellius, IV. 12. Agrum male colere censorium probrum judicabatur: Pliny, XVIII. 3.

* Livy, IX. 46.

of their own authority in the cases where we are told that they added new tribes, formed out of forein communities which obtained the complete franchise, to the old ones[883]: this merely means that the law for erecting the new tribes was proposed to the people by them, and not by any other curule magistrate. On this matter they cannot possibly have been left to their own discretion: for scarcely any measure had so much influence on the condition of the republic as the institution of new tribes: and the granting the full franchise to municipal towns was so strictly deemed an act of the soverain power, that the tribunes in the sixth century would not so much as allow the senate the right of proposing it[84]. The citizens of sympolitan towns, it is true, stood on the same footing with the other erarians: but with regard to the state it was a very different matter, whether the Quiritary franchise was bestowed by the censors on individuals living at Rome, and connected with the native Romans by manifold ties, or on distinct forein communities, some of them at a great distance from Rome.

The patricians too, as members of the general tribes, were liable to the disgrace of being struck out of them: the erarians are now contradistinguisht from the citizens, and not, as before, from the plebeians in the ancient sense. Over the patrician equestrian order however the censors had no power, beyond that of granting or resuming the horse provided by the state: with respect to the corresponding plebeian order, it must certainly have been their duty even from the first to supply its vacancies, and to purge it of unworthy members. The notion that in early times the magistrates who possest the regal authority filled the senate with their friends at pleasure, betrays a total ignorance of the nature of that body: the

[883] Tribus additae propter novos cives—censores addiderunt Q. Publilius, Sp. Postumius: Livy, VIII. 17.

[84] Livy, XXXVIII. 36.

censors can scarcely have had the power of excluding any from it except such as had incurred legal infamy. It would however accord perfectly with the ancient state of things, if there was a law, the name, author, and circumstances of which, must be left undetermined, directing them to complete its numbers by taking the best men out of every cury[885]. Plebeians who had held the consular tribuneship cannot have been excluded; whether we suppose that they were added to the full complement, or that a proportionate reduction was made in the deputies from the curies: it is most probable however that the intention at this time was to admit none from the lower order but these.

The administration of the public revenues was undoubtedly entrusted to the censors just as fully at their first institution as in later times; when they not only establisht such tolls and excise-duties as they thought proper in subject towns, but fixt the price at which the farmers of the salt-marshes were to sell salt in Rome itself, and in the districts and market-towns inhabited by Roman citizens[86]. The farming of the customs and similar branches of revenue, as well as the contracts for public works, were committed to them; though the senate, when the terms were too hard, might moderate them[87]. The land-tax, being fixt in money, was not liable to be farmed. It was raised by the tribunes of the *aerarium*,

[885] Festus, Praeteriti Senatores: a strange article, at which it was not without good reason that Scaliger and A. Augustinus took offense. The statement however that the consular tribunes had also the right of drawing up the list of senators, may at all events be referred to the censors, when these were reckoned among them: and I confess it appears to me very possible, that the law mentioned in Festus, the name of which at all events is miswritten, may have been of a much later date.

[86] Livy, XXIX. 37. XXXII. 7. XL. 51.

[87] Livy, XXXIX. 44. Polybius, VI. 17. The applications of the farmers general for indulgence, in the time of Cicero are well known.

unless it was levied to pay the army, when the soldiers demanded it directly from the persons charged with it, as the knights did their horse-money. At the institution of the censorship however no pay was yet given: and it is very unlikely that a tribute should have been imposed at that period for any other purposes[888]. Whether this was to be done, and what sum was to be raised, and how much should accordingly be paid for every thousand ases in the census, this being the scale on which the tax was calculated[89], were matters decided by the senate alone, as they alone gave drafts on the treasury[90]. Even in the most advanced stage of the democracy the people never claimed the right of granting taxes. The comitia might refuse to declare war: but when they had resolved on the end, the government was authorized to raise the means of accomplishing it, money and men. A general assembly, though it consist of many thousands, is after all only a way of representing the nation; and a magistracy, even when it is not elected by the people, may possess the same capacity: but if a representative body, in any of the countless forms between these two extremes, refuses the government the means of preserving the state, it oversteps the bounds within which authority and freedom, the state and the nation, may exercise a mutual controll on each other. The act is a declaration of war, and one of the two powers must succumb: a usurpation or a revolution is at hand. The tribunician veto against the payment of the land-tax could not lead to this result: for down to the Gallic war such a veto was no more than a demand that the first order should contribute fairly for its possessions in

[888] *Indicere, imperare.*

[89] Livy, XXIX. 15. XXXIX. 44: also XXXIX. 7. For the repayment is made on the same footing as the payment. This is enough for our present purpose: the explanation of this passage must be deferred to its proper time.

[90] Polybius, VI. 15.

the public lands: as in former ages, when the domains of the European princes were very large, and the wants of the state were not out of all proportion to the revenues of those domains, the states might refuse subsidies, without producing any other effect than a little embarrassment to the prince. In later times the tribunes, by exercising their veto, declared that the usurers should not be allowed to enforce their claims, when the republic was seeking to impose a property-tax on land, the whole produce of which was to go to the creditor: in other words, they drove the senate, either to make some equitable adjustment in favour of the ruined land-owners, or to levy a property-tax from the monied men. Moreover the indefinite nature of the tribunician power rendered the veto incomparably less dangerous, than if it had been exercised under the form of a strictly legal right.

So far were the Romans from regarding taxation as depending on the will of the people, and the determining concerning it as the great business of freedom, that perhaps there is not a single instance, except the duty of five per cent on manumissions, of the legislature's interfering about it. Even the senate left the regulation of the property-tax entirely to the discretion of the censors. Camillus and Albinus laid a heavy burthen on bachelors, and made orphans liable to the ordinary taxes[891]. Cato and Flaccus subjected women's clothes and ornaments, and chariots of more than a certain price, to taxation: they rated the taxable value of high-priced young slaves at ten times the purchase-money, and put a higher duty on all these objects, as a penalty for possessing them[92]. These instances of general regulations

[891] Plutarch, Camill. c. 2. Valerius Maximus, II. 91.

[92] Livy, XXXIX. 44. His rebus omnibus terni in millia aeris attribuerentur: which would not have been recorded had not three ases been more than the usual rate. The *simplum* seems to have been one as in a thousand, the rate laid on the colonies by way of

have accidentally been preserved: perhaps there were few censorships without an edict making some innovations of the same kind, and none so mild as not to tax some individuals at a rate many times higher than the usual one; as C. Furius and M. Geganius ventured to do in the case of one of the first men in the state[893]. From this instance, and from the decuple valuation of slaves, it is clear that the real amount of property differed from the sum at which it was rated for the purpose of taxation in the Roman census, as well as under the Athenian financial system[94]; though in quite another manner. At Athens a citizen's whole estate was valued; but only a part of it, which part was smaller in the case of the poorer classes, was separated from the rest as taxable: and for this part a uniform rate was paid. At Rome a very large part of many estates, being only possessions, was not taken into account; and even many sorts of property were excepted; while certain kinds of property were assest at several times their estimated value: added to which the rate on these parts, and in some cases on the whole, was several times the ordinary standard. On the other hand we find no trace of any favour shewn to persons of small property, if it came up to the limit where taxation began.

The financial calculations and the keeping the register were the business of notaries: these were freedmen, and formed a company, which was assuredly of an older

penalty. Plutarch, Cato Major, c. 18, states some points differently; but they are such as may be past over here.

893 Livy, IV. 24.

94 Boeckh's discovery of the distinction between the οὐσία and the τίμημα, and his detection of their mutual relation (at the beginning of the second volume of the Econ. of Athens), beside their great intrinsic value, afford an instructive example how ancient writers, whose authority in other respects is deservedly high, got entangled in errours, which their immediate successors did not suspect, but which critical philology may expose, and thus find out the truth, where the ancients themselves were in the dark.

date than the censorship. The mere writing was probably performed chiefly by the public slaves, whom we find spoken of as in the service of the censors[895]: they were however wanted besides to keep order, and to execute various commissions.

There is certainly no reason for supposing that the entries were made less skilfully or more negligently than at the present day[96]. Pieces of land which changed their owners might be measured, and subtracted or added in the tax-registers, just as the same thing is done now. With regard to the greatest part of the taxable land however, the arrangement in the state-terrier might be preserved with far more ease and certainty, if the plots belonging to the plebeians, whether by assignment, or by purchase at sales made by the questors, formed separate estates, which could not be transferred to new owners except in parcels bearing a definite proportion to the whole, measured by the duodecimal scale: and unless such a restriction had existed, there manifestly could have been no foundation for the agrarian *controversia de modo*. Besides wherever the Roman institutions were retained at the beginning of the middle ages, and Italy had not become a Lombard country, the practice of alienating such aliquot parts of an estate continued. Nay even down to the present day a measure of land has been preserved, in the neighbourhood of Rome and in Latium, which derives both its nature and name from the ancient terrier. The *pezza* is the ancient juger[97]: the *rubbio* of seven

[895] Livy, XLIII. 16.

[96] I am myself acquainted with some very ancient registers of land,—for instance with an Italian one made in the 15th century,—which appears to have been framed with the most perfect accuracy: and assuredly there was no greater skill at that period than in the early ages of the Roman republic.

[97] Since the Roman foot was equivalent to 0.29624 of a metre, as has been placed beyond doubt by Cagnazzi's researches, the juger contained 25 *are*, 27.4343 *centiare*: while the *pezza* (according to the

pezze is the plebeian plough-land of seven jugers[898]. The word itself evidently comes from *rubrum,* the title in the terrier, so called because the name of the estate was written with red ink: and under it was registered the name of its proprietor, and the changes that took place in the ownership. It is exceedingly interesting to catch a glimpse of the every-day transactions of antiquity: therefore I will here remark, that the business of the witnesses at sales was to prove that the purchaser was really the person whose name was entered in the roll of the citizens, either under the head of his tribe or as an erarian. For a mere outlying citizen could not purchase landed property, any more than a foreiner: it was necessary that the name of every proprietor registered under a rubric in the terriers, which were drawn up according to the regions[99], should be found in the roll of the citizens. Hence if any of them incurred the extreme *deminutio*

tavola di riduzione ecc. Rome, 1811, p. 78) contains 26 *are*, 40.6224 *centiare.* The Roman foot has been augmented in the course of time to 0.29789 of a metre: so that 28800 square feet are equal to 25 *are* 55.6674 *centiare.* But not only may the knowledge of the exact superficial contents of the juger have been lost in the middle ages; it is also possible that the present measure of land, the *rubbio*, may not correspond precisely to that of seven jugers. For it has manifestly been introduced since the revival of letters by a legal enactment: it is meant to represent the area required for sowing 640 pounds of wheat (that is, 40 *modii*, if the weight had not been altered): the *pezza*, though it is still a seventh part of the larger measure, has been adapted to a scale quite forein to it, which is divided into *catene* and *staioli;* and from a parallelogram of two *actus* it has been converted into a square containing 16 square *catene.* Still the essential identity between the *pezza* and the juger, differing as they do only by a quantity which according to the present Roman foot would not amount to four per cent, is too clear to be denied. And what other instance do we find of a measure divided by seven?

[898] Above, p. 163.

[99] Hence Cicero, pro Flacco, 32 (80), says: *in qua tribu ista praedia censuisti?* *Tribe* in this passage, as in others, is equivalent to *region*: both bore the same name.

capitis, by surrendering his franchise, his name was also erazed from under the rubric. If he took advantage of his right of exiling himself to avoid judgement, and a sentence of outlawry past on him, his piece of land undoubtedly became forfeit to the state. If he did so from any other cause, the land was left open: there was no one to assert a right to it, if a stranger took possession of it; so that anybody might acquire the ownership by usucaption. The possibility of such a loss was enough to induce the owner to sell it before he went abroad, or at least,—and this was sufficient for the state,—to make a nominal conveyance of it to some one from whom the government could demand the land-tax. If the owner had a son under his power, and left him at Rome, the son stept into his father's place, just as if it had been vacated by death. In later times it is quite certain that the right of removing to forein parts was confined among the Romans, as it was among the Italians, to such as left children behind them[900].

[900] Livy, XLI. 8.

CIVIL AFFAIRS FROM THE YEAR 311 DOWN TO THE LAST VEIENTINE WAR.

By having the arbitrary power of fixing the value of every man's taxable property, and the exclusive management of the register of the citizens, the ruling order was enabled to pack the centuries in such a manner, as for the most part decided the event of proceedings at their assemblies. If a man's taxable property might be multiplied by way of penalty, the same thing might be done under the plea of a well-earned reward. Still oftener might general regulations be made, by the application of which the property of some stood higher, that of others lower, in the classes than before: and how many direct falsehoods may have been resorted to, for the sake of getting a majority? Party-spirit is blind to the baseness of such frauds. So long as the army received no pay, too high an assessment seldom subjected a man to any other disadvantage than heavier duty in war: even from this the consuls might relieve him, since they made their levies at discretion: and if a tax was ever laid on, the questors, who were exclusively patricians, might pass over whom they chose in collecting it. The tribunes indeed undoubtedly took the part of those whose property the censors rated too low, in order to transfer them into an inferior class: but how were false voters to be convicted? If such methods were pursued systematically the patricians must have been able to command the elections of the centuries; not indeed without opposition;

still less without exciting vehement indignation; but the abuse was without a remedy.

Thus it might have happened that none but patricians should be elected even to the first military tribunate; and yet the ancient commonalty might not deserve the reproach of having childishly disturbed the peace of the republic for the sake of gratifying an idle vanity, by obtaining a right which they did not care to exercise. *Beware*, said C. Gracchus to the assembly of the people, when the bloody inquisitor P. Popillius, after having been protected for many years by the *optimates*, as they were called, was at length brought to trial; *let it not be said of you that you were led by blind passion to wish for what you carelessly rejected, when at last fortune placed it in your power*[901]. The Roman plebs would have merited this reproach, and not the praise of ideal modesty, which Livy decks it with, if it had elected in the way he supposes. But it is not chargeable even with the semblance of such folly: for one of the first three tribunes, L. Atilius Longus, was unquestionably a plebeian, since there is a second L. Atilius Longus in the year 356, who is expressly called so by Livy himself[2].

It was for this very reason that the senate forced them to resign in the third month of their office[3]; under the pretext of a decree of the augurs declaring their installation defective. Who presided over the republic during the remaining months of the year, was not stated in the old annals. Macer, who found in the original record

[901] Gellius, XI. 13.

[2] V. 13. How little weight need be attacht to his opinion that all the three military tribunes were patricians, appears from his saying the same thing just as expressly of all the decemvirs in the second college; in a passage which may perhaps have been written on the very same day: IV. 3: *decemviris, teterrimis mortalium, qui tum omnes e Patribus erant.* If the name in Livy (IV. 7), T. Caecilius, be correct, he too was certainly a plebeian.

[3] According to Dionysius, XI. 62, on the 73d day.

of the treaty with Ardea, and in a register, that that treaty was concluded in this year by L. Papirius and L. Sempronius, first filled up the gap with their names[904]; whether he saw them described as consuls in those documents, or merely inferred that they must have been so. He must have been ignorant of the necessary connexion between the two offices formed out of the consulate: else it could not have escaped him that those two magistrates, who appear as censors in the next year, must evidently have already been so in this, and that consequently the functions assigned to the consular tribunes might devolve upon them without a new election, when those officers were removed. Moreover the ratification of a treaty might belong to the censors as magistrates of a higher rank[5], even if the military tribunes had still been in office. Their not being named as censors till the next year may be accounted for by supposing that in that year they completed the registering of the people for the lustre; the year when this was accomplisht, was noted in the official rolls[6].

The people did not suffer the removal of the military tribunes to pass so quietly as Livy, with his view of the case, might naturally imagine. There had been only one instance of a dictatorship for the last fifty years, and that was to avenge Caeso: T. Quinctius was now armed with this power. The reason is said to have been, that the consular tribunes were convulsing the republic: probably with the support of the tribunes of the people they refused to submit to the hypocritical declaration of the augurs[7]. Meanwhile the oligarchy must have been

[904] Livy, IV. 7.

[5] When the consuls after the Licinian law stept into the place of the military tribunes, the censors continued to be the superior magistracy, and the oldest censorian senator was chief of the senate.

[6] Dionysius, I. 74.

[7] Lydus, I. 38: Τοῦ δήμου πάλιν στατοῦντος (read στασιάζοντος) προεβλήθησαν χιλίαρχοι τρεῖς· ὧν σαλευόντων τὰ πράγματα

collecting forces; and this time probably in the first instance from Ardea, a city governed by a faction akin in its nature and spirit to the Roman patricians, and inclined to favour them, and with which a treaty was concluded in the same year: the cession of the waste territory of Corioli must be regarded as the price of the aid afforded[908]. On the thirteenth day Quinctius had executed his commission, and laid down his office.

These may possibly have been days of horrour: and if there be any foundation for a story, which neither of our two historians takes notice of, and the date of which we have nothing to determine,—if nine tribunes of the people were ever actually burnt alive, as the opponents of the consul Sicinius had been previously,—this is the only point of time at which so surprising an event can possibly have occurred.

Valerius Maximus, among other examples of ancient severity, extolls a tribune of the people, named P. Mucius, for having burnt his nine collegues alive, because, under the influence of Sp. Cassius, they hindered the election of magistrates to fill up vacancies[9]. Dion too, without naming the tribune, mentions the same occurrence, and expressly ascribes the execution to the populus[10]. So

ἀνηγορεύθη δικτάτωρ Τίτος Κύντιος, ὃς ἐν μόναις τρισὶ καὶ δέκα ἡμέραις κατευνασθείσης τῆς στάσεως ἀπέθετο τὴν ἀρχήν. According to Livy he was interrex: but this is clearly wrong, since no consuls were elected. In like manner M. Atratinus in 272 is by some called interrex, by others dictator: see above, p. 187.

[908] Livy, IV. 7-11.

[9] VI. 3. 2. P. Mucius Tr. pl.—omnes collegas suos, qui duce Sp. Cassio id egerant ut magistratibus non subrogatis communis libertas in dubium vocaretur, vivos cremavit—poenam novem collegis inferre ausus.

[10] Dion, Exc. de sent. 22. p. 152. ed. R. (and Zonaras). *Ἐννέα ποτὲ δήμαρχοι πυρὶ ὑπὸ τοῦ δήμου παρεδόθησαν· ἀλλ᾽ οὔτε τοῦτο τοὺς λοιποὺς ἐπέσχεν· οἱ μετὰ ταῦτα δημαρχοῦντες—οὐκ ἠμβλύνοντο.—ὥστε καὶ τῶν εὐπατριδῶν τινας—ἐς τὰ τοῦ πλήθους νομίσματα* (read *νόμιμα*)

that Mucius did not inflict the punishment of high-treason on traitors who had obstructed the election of their successors, but acted as an adherent of the patricians: and thus Dion related this among other outrages of that order, adding, that even this execution did not stifle the spirit of the plebeians; but that on the contrary the tribunes grew more and more vehement. The share taken by Mucius in the transaction must be considered as limited to his aiding in the execution of a sentence pronounced by the curies, as the order who had been injured: none but a person who was himself inviolable could lay hands on the inviolable tribunes. The time when this horrible judgement took place, Dion leaves altogether undetermined. He mentions it only by the way, when speaking of the death of Genucius and of the Publilian law, in a general picture of those ferocious times; far earlier than it can possibly have occurred, since the tribunes were not raised to ten till the year 298. We may assert no less positively that it cannot have taken place in the very few years between 298 and the decemvirate[911]: indeed Dion couples it with other occurrences more recent than the decemvirate; for he speaks of patricians going over to the plebs, in order to obtain the tribunate. This is related to have been done by L. Minucius: and Dion probably accounted for the tribuneship of Sp. Tarpeius and A. Aternius in the same way: nor can Sp. Cassius and P. Mucius have filled that office otherwise than as adopted plebeians. Of these two persons the latter puts us in mind of the Mucius Scaevola, whom we read of in 267 along with eight patricians, some of them consulars, and who cannot have been inferior

μεταστῆναι — τὰς (read *τῇ*) *τῆς δημαρχικῆς ἰσχύος ἐπιθυμίας* (read *ἐπιθυμίᾳ*).

[911] The first college of ten tribunes was reelected in 299: in 300 the patricians agreed that the new code of laws should be drawn up; in 301 there was a pestilence, but quiet at home; in 302 preparations were making for the decemvirate.

to them in rank; the former of the consul Sp. Cassius: the number of the tribunes however was not raised to ten for thirty years after his time. The mention of the fact that his children were spared may have been occasioned, though Dionysius, who repeats it, may not have observed that it was so[912], by some annalist's finding fault with the soft-heartedness that left a viper in the bosom of the republic; while another exulted in the infatuation with which the patricians had run into danger, though the vengeance anticipated never took effect. For hatred, they might argue, of his father's murderers, and the thirst of vengeance had in the course of time carried one at least of the sons of Cassius over to the commonalty; while P. Mucius on the other hand followed him thither, to avenge the blood of his father or grandfather on a person descended in the same degree from the Cassius who had been the author of his ancestor's death[13]. This, it appears to me, sounds probable enough; and the number of the nine tribunes reminds us of the eight who in 310 joined with Canuleius in demanding the admission of plebeians to the consulship,—a capital offense of course in the eyes of the oligarchy. The execution however cannot have occurred in that year; since the patricians were at least obliged to come to a compromise; the name too of the one who opposed his collegues, was C. Furnius[14], not Mucius. Now if we follow up the trace of these probabilities, the nine tribunes, as was often the case, may have been reelected as deserving men, and Sp. Cassius among the rest; while the tenth who had betrayed himself was not so; and P. Mucius may have

[912] Above, note 376.

[13] If the event be dated after the decemvirate, Cassius must be considered as one of the nine: but it is likewise possible that Valerius, or the author he followed, may by an anachronism have supposed that there were ten tribunes before the consulship of Cassius.

[14] Dionysius, XI. 52.

succeeded in stealing into his place. The proceeding for which they were punisht as for a crime, would be their strenuous opposition to the removal of the military tribunes, and to the plan of investing a magistracy chosen by the curies with the whole of the consular power. This in the language of the oligarchy would be described in such terms as we read in Valerius, that they obstructed the election of other magistrates to fill the vacant places.

All this, when taken together, certainly gives this hypothesis a very plausible look. Yet on the other hand there are considerations of such weight, leading us to regard the whole story as one and the same with that of the execution of the nine patricians in 267, that it is scarcely possible to decide with full conviction between the two opinions[915]. How strange is it that the number of the sufferers, and the mode of their death should be just the same! Both stories have a Mucius, the one putting nine persons to death, the other one of nine who are put to death; according to the inversion so common in tradition, in which things set in direct opposition are in reality one and the same. In this way the remembrance of a sad disaster may have been transformed by the Scaevolas into one full of glory for their house: and if P. Mucius was turned into a good citizen, in the oligarchs sense of the phrase, the victims of his severity could only be firebrands and tribunes. Taking this view, we have no need of a second Sp. Cassius and a second Mucius: and certainly it is a very important consideration that no sort of trace of either is to be met with. We can also dispense with the supposition that two stories so singularly allied to one another should both have disappeared in the same way from the Annals.

Be this as it may, for five years after this treacherous

[915] Above, p. 128.

revolution[916] we find that consuls were created; and among them T. Quinctius occurs twice, though after his dictatorship nothing but the unlimited influence of the patricians in the centuries, or a new usurpation by the curies, could place him in that station. The latter is plainly stated with regard to the year 316; unless it is by mere chance that Livy makes use of terms which elsewhere convey a definite sense[17]: and the fact is the more probable, because the patricians at this very time had urgent motives for securing one consul at least entirely devoted to them.

[916] After the year 312, where the remnant of the eleventh book of Dionysius breaks off, we are confined for the internal history, with some very trifling exceptions, to Livy's first decad, throughout the period over which it extends. How many statements would the diligent Greek have preserved, where now every trace has vanisht? From the latter half of his Antiquities we have not only very important extracts in two titles of the collection made by Constantine Porphyrogenitus; but, as Appian's first three books were entirely compiled from Dionysius, all that is taken from them in that collection must be considered as belonging substantially to the latter writer's remains. Plutarch's life of Camillus was likewise drawn from the same source, though not quite so exclusively. These relics, every piece of which is of decided importance, were enricht in 1816 by Monsignor Mai with a collection, the singular nature of which has perhaps operated to prevent its being received and turned to account with due thankfulness, as a real accession to history. I know no other way of accounting for its origin, than by conjecturing that some one compiled it from a manuscript, in which sometimes stories, at others half sentences, at others broken lines, were markt in the margin for the sake either of the matter or of the words and expressions, with dashes, indexes, or the abbreviation σημ.: thus at Venice there is a very old manuscript of glosses on Juvenal written continuously, without the words which are explained, or any mention of the name of the author. The matter in these extracts is as authentic as anything in Dionysius; though the words and style are frequently so strange, that one cannot help feeling great doubts whether they were taken immediately from him. I quote them according to the sections of the second edition (in the 2d vol. of the Nova Collectio, Rome, 1827), and the pages of the Frankfort reprint.

[17] Livy, IV. 13. Consul sextum creatus T. Quinctius Capitolinus —collega additur ei Agr. Menenius. See note 424.

There had already been a scarcity the year before[918]. In order to quiet the people, and, as far as possible, to meet the emergency, L. Minucius was made prefect of the corn-market (*praefectus annonae*), which seems to have been an extraordinary magistracy: but he was unable to fulfill the hopes placed in him. His attempts to buy corn abroad were unsuccessful: the failure of the crops had perhaps extended far and wide: Etruria was the only country that sent any supplies[19]. Nothing remained but to husband the scanty stores in hand. An account of them was taken; and the owners were obliged to deliver up to the government whatever they possest above the quantity necessary for a month's consumption in their households. The corndealers were persecuted as criminals. The prefect, it is manifest, must have regulated what portions were to be sold at fixt prices to all the citizens out of the magazines. The unfortunate slaves had only a part of the corn requisite to still their cravings allowed them. But the dearth and famine were nevertheless so intolerable that many of the plebeians in despair threw themselves into the Tiber.

In the midst of this distress, the government was put to shame by the successful exertions of a private citizen. Sp. Maelius, the richest of the plebeian knights, spent his fortune in buying up corn in Etruria. By his energy and address he succeeded in getting large supplies; for

[918] The year of office at this time coincided almost exactly with the physical one which begins with the winter solstice. When T. Quinctius entered upon his consulship, nearly six months had elapst since the harvest.

[19] In the neighbourhood of Rome the crops can scarcely fail from any cause except want of rain; and by this the whole tract along the coast is equally affected. Hence we often find it stated that it was unable to afford relief in such cases. Corn however might be brought from the interior, where the climate was different; and Umbria could find no outlet for its abundant produce more convenient than by sending it down the Tiber to Rome.

he did not shrink from the price. The poor he let have it at a moderate rate, the indigent gratis[920], while the government sold theirs. Such munificence, even if supported by the greatest wealth, must necessarily have been limited to sparing donations; although the number of the persons embraced by it is not to be estimated according to the heads in the census. Still the taunt, that the people sold him their souls for portions of a couple of pounds of spelt, must not be taken literally[21]. His bounty which was proved by his actions, and afforded some degree of relief, won the hearts of the poor, along with the favour of the more affluent plebeians, who spoke with pride of the man of their order.

Now when T. Quinctius had entered on his abovementioned sixth consulship, in 316, on the information, it is said, of the prefect L. Minucius, that clandestine meetings had been held in the house of Maelius, and that arms had been collected there, L. Cincinnatus, now in the last stage of life, was appointed dictator. The senate sat the whole day in secret consultation. During the night the Capitol and other strong posts were garrisoned with trusty men[22]. The dictator with an armed train set up his tribunal in the Forum. The people flockt together, curious and anxious about the meaning of this mysterious spectacle: Maelius came among the rest. C. Servilius Ahala, the master of the horse, summoned him before the dictator. Seeing death before his eyes, he snatcht up a butcher's knife to ward off the officers, who were preparing to drag him along[23], and ran from them into the crowd, which received and protected him; till Ahala, sword in hand, and accompanied

[920] Zonaras, VII. 20.

[21] *Bilibris farris:* Livy, IV. 15: spelt-paste, made of *farricello*, the place of which is now supplied by a much worse grain, *polenta* of maize, formed the food of the people far more generally than bread.

[22] Zonaras, VII. 20.

[23] Dionysius, exc. Mai. 1. (p. 3.)

by an armed band of patrician youths, broke into it. The people gave way; and he slew the defenseless Maelius. This was an act of murder: since he could kill Maelius in this manner in the Forum, he might have carried him before the dictator's tribunal, who himself had no right to do more than secure his being tried. A case of this sort, where there clearly was no overt act, and which could only be high treason by construction, was not to be decided by any single judge, but by the centuries. In these the poor had no votes: and that all the favour of the leading plebeians could not have saved a defendant in that court, who had but harboured schemes of violence against the government, is proved by the elections of this period. Had Maelius been guilty, there could have been no want of acts which would have compelled a judge to decide the wager of law against him, so that he might be kept in prison for his trial: and for securing this the dictator had legal authority to bar the intercession of the tribunes.

Consequently there can have been no fact to bring against him, on which a court could have grounded a verdict of condemnation; neither the collecting of arms[924], nor the hiring of troops[25]. These are mere rhetorical fictions; just like the pretense of Minucius in Livy, that the tribunes of the people had sold themselves to raise Maelius to kingly power, and that all the parts for the insurrection were already distributed. Yet not one of his abetters was punisht[26]? The head too of such a conspiracy appeared in the Forum, without any armed men to protect him, after a dictator had been appointed! Would not Maelius have got himself elected tribune, the better to reach his ends under that inviolable character? Could ambition blind him so far, that he did not

[924] Livy, IV. 13. Zonaras, VII. 20.

[25] *Φρουροί*: Zonaras and Dionysius, as last quoted.

[26] *Μηδένα ἕτερον κολάσας ἢ ἐπαιτιασάμενος*: Zonaras, VII. 20.

perceive that the citizens of the first classes, who were the only persons possest of arms except the knights, would have made common cause with the houses against a usurper, and that the attachment of all the poor in the city would have been powerless against such a combination? Since Maelius did not seek the means, which the tribuneship would have afforded him, of bringing about a free election of military tribunes, and so raising himself to that office, it must remain doubtful whether he even aimed at doing so; probable as it may be in itself that his alms did not flow from pure charity. Supposing however that he had bestowed them with this end, or with the still higher one of extorting a share in the consulship from the patricians, now that they themselves had canceled the constitution of 311, would this, more especially after their incessant usurpations, which did not rest even during the state of things anterior to 261, have been a crime? This is another instance, unless appearances are strangely delusive, of the wolf complaining that his brook is troubled.

It is melancholy to think that Cincinnatus, at the age of eighty[927],—near the close of a life which the utmost zeal of party-feeling could not have held up as a model of primitive rigid virtue in the opinion of all ensuing times, if it had not actually been pure and virtuous, so far as it was not swayed by the spirit of a ruthless faction, — committed murder in the service of that faction. Nowhere are men's characters harder, nowhere do they more readily spurn remorse to gain party ends, than in corporations and aristocratical republics; and not in those of antiquity only; though in their better days such callousness may often be united with manly virtues. In such bodies men otherwise of spotless life have shed the purest blood with fanatical indifference. Seditious demagogues have seldom been equally cruel; but neither

927 Livy and Zonaras.

have they often kept the principles of their order so steadily in view: the others are the nobler beasts of prey.

The house of Maelius was pulled down: its vacant site, the Aequimaelium[928], continued for five centuries a memorial of his fate, and seemed to establish his guilt. Later ages never doubted it, and, believing the traditions of the Quinctian and Servilian houses, reckoned Ahala among the models of heroic virtue. His contemporaries judged otherwise. It is well attested that he was accused of murder before the people, and only escaped condemnation by voluntary exile[29]; whether we suppose that this happened three years after, in 319, and that the bill brought in by a second Sp. Maelius, a tribune, for confiscating his property, was connected with the charge, and was not ineffectual, as Livy conceives it to have been[30]; or whether it took place in the same year. For the facts, that three tribunes demanded vengeance for the blood that had been shed, and that an insurrection broke out when the terrours of the dictatorship were removed, even Livy, whose accounts are now the only

[928] It lay at the foot of the Capitol, not far from the prison, and is now buried deep under the rubbish over which the Via di Marforio passes.

[29] Valerius Maximus, v. 3. 2. *Ahala—custoditae libertatis civium exilio suo poenas pependit:* this is the *offensio Ahalae* mentioned in Cicero, de re p. I. 3, along with the exile of Camillus and other celebrated Romans. In the declamation Pro Domo, 32 (86), Ahala is spoken of along with Camillus and Caeso as having been condemned by the infatuated people: whereas Cicero himself most positively asserts, that in ancient times no Roman court ever past a sentence of banishment: see above, note 132. I say, in ancient times: for in his days exile had already become a punishment, for instance by the *lex Calpurnia de ambitu.* The recall of Ahala, notwithstanding the rhetorician's display of his familiarity with the Annals, seems no better founded than that of Caeso: at all events it would merely prove that the patricians had again grown powerful enough to restore their martyr.

[30] Livy, IV. 21. Seditiones quaesitae nec motae tamen—quae vaniora ad populum ipso auctore fuere.

ones we have for a long period, with a very few exceptions, has not entirely past over, as he has the punishment of Ahala. He found it stated in some of the Annals that the ferment was allayed by L. Minucius, who went over to the plebs, and was chosen by the tribunes as one of their body: a story totally incredible so far as it makes him elected an eleventh tribune[931]; but which would not be so much so, supposing he was taken in to fill up a vacancy in the college[32]. In this magistracy he lowered the price of corn in three market-days, that is, by means of a bill fixing a maximum, to an as a modius[33]. This price was not unexampled[34]: and we can easily conceive how an enormous fall might be effected. We cannot indeed set much value on the statement, that the distress was caused by the engrossers of corn[35]: they certainly however contributed to it: and if the prohibition against keeping more than sufficed for a month's consumption is to be referred to the tribunate of Minucius, or at least was only carried into effect by the authority of that office, a vast quantity would come at once into the market, while nobody ventured to buy more than he immediately wanted. Indeed there would be no wish to do so, supposing that the prospect of an abundant harvest was no longer distant[36]. This occurrence

[931] Livy, IV. 6. Pliny, XVIII. 4.

[32] This conjecture opens a door for several others.

[33] Pliny, XVIII. 4. Farris pretium in trinis nundinis ad assem redegit.

[34] Vol. I. p. 462.

[35] Τοὺς εὐπόρους ὡς περὶ τὸν σῖτον κακουργοῦντας ἐν αἰτίᾳ πεποίηντο: Zonaras, VII. 20.

[36] I have known the price of the *rubbio* of wheat at Rome, after having got up to 24 *scudi*, drop down to 10 immediately after the harvest: in these cases the fall as well as the rise was the work of the corn-usurers, some of whom were men of high rank. They lent corn in the spring to the poor husbandman, who after a scanty harvest the year before had been compelled to sell the whole of his

has been strangely distorted, so as to make Minucius sell the stores left by Maelius at this price. Such a largess of stolen goods could not possibly have been regarded as an act of beneficence: and there is a well attested statement, that the commonalty rewarded him, as its preserver in the time of need, with an ox having its horns gilt like a victim for sacrifice, and with a statue outside the *Porta Trigemina*[937], for which everybody subscribed an ounce[38].

An irresistible reaction would have made the murderers of Maelius rue their crime, like those of Genucius previously, if the plebs had still been the same body. As it was, the consequences were ambiguous. The indignation of the commonalty was vehement enough to extort an election of military tribunes instead of consuls: the consciousness of guilt deterred the patricians from making a firm stand against this. But their influence was so predominant in the centuries, that no plebeian was chosen in 317, and as it were in mockery, one of the three tribunes elected was a son of Cincinnatus. The

produce by the increase in the price of all articles: this corn was to be repaid after the next harvest; not however measure for measure: but the quantity advanced was valued in money at the market-price; and this debt was paid after the harvest in corn taken again at the market-price: that is to say, 24 measures were paid for 10. In this way the stock that had been hoarded was sold at the highest price; and the artificial low price did not last: so that there was a twofold profit. It may perhaps have been against proceedings of this kind that Minucius directed his measure, the duration of which is not known.

[937] Pliny bears evidence in two passages to the existence of the statue *extra portam trigeminam:* XVIII. 4, and XXXIV. 11. In Livy, IV. 16, after the words *L. Minucius bove aurato,*—and before *extra portam trigeminam,—et statua* has manifestly dropt out. An ox thus deckt out for sacrifice was given as a mark of honour to a deliverer; as in the case of P. Decius: Livy, VII. 37.

[38] *Unciaria stipe:* Pliny, XXXIV. 11. All statues were of brass; the heavy money collected supplied the material.

opposition however succeeded in raising Mamercus Aemilius to the first place, whose previous appointment as questor, along with L. Valerius, shews that he enjoyed the love and confidence of the people. His character stood so high[939], that the oligarchs, even if they hated him, could not venture to refuse him the confirmatory vote of the curies. They were even compelled in pressing emergencies themselves to call him more than once to the dictatorship: which occurs frequently now that the consulship is shorn of its ancient power. In his first dictatorship, in 321, he employed his authority for the wholesome purpose of shortening the duration of the censorship, which had hitherto lasted for five years, to eighteen months; a regulation for which the censors then in office requited him with all the indignities they could offer. The people felt itself affronted in the person of the venerable protector of its freedom: and nothing but his intercession screened C. Furius and M. Geganius from violent usage. Throughout the remaining years of their lustre, military tribunes continued to be chosen. Then followed five consulships; during which, even when there were censors, the pretor's authority undoubtedly rested with the consuls. After this, in 329, begin the abovementioned colleges of military tribunes, with which, if there were no censors, a pretor was joined: and these were only twice interrupted by consulships during the first thirteen years. Whenever this happened, it was by a special ordinance of the senate: the rule was to elect tribunes[40]: and as the one party was anxious by appointing consuls to remove the very possibility of a plebeian's coming in, so the other party clung to this possibility, notwithstanding the bitter mortification they had to endure at being trickt time after time out of their right. It was not merely by the arbitrary controll of

939 Vir summae dignitatis: Livy, IV. 16.

40 Livy, IV. 25. 36.

the censors that the issue of the elections was put into the hands of the ruling body, but also by that of the magistrate who presided in the assembly, and who, if there did not seem to be any pressing danger, peremptorily refused to take votes for plebeians[941]. This step, which was hazarded but a short time before the houses were deprived of their confirmatory vote, might be tried a century earlier with far less scruple, and must have been taken frequently. Sometimes the senate supported this arbitrary refusal by ordinances excluding the very candidates whose election the people had most at heart; as in 346, when the tribunes of the people, who went out of office four days before the military tribunes, were declared to be ineligible[42]. If even in spite of this a determined resolution might have made the election of a plebeian inevitable, the confirmation of the curies was still wanting[43]: and this, a hundred and fifty years before the Maenian law, was assuredly no empty form. We find but one plebeian military tribune prior to the change in the constitution in 350; Q. Antonius Merenda, in 333: and his election may be explained from the circumstances under which it took place. C. Sempronius, one of the consuls of the preceding year, was threatened with an impeachment for a disgraceful defeat and for treachery: a charge doubly menacing, because the assembly which elected him had been held, to the extreme indignation of the people, in lieu of an election of tribunes. It was necessary to soothe the plebeians: and for this end no method was more effectual than to hold the elections

[941] De plebe consulem non accipiebat: Cicero, Brut. 14 (55). Comitia quibus non haberetur ratio sui: Livy, IV. 7. 56.

[42] Livy, IV. 55. The Icilii, against whom this declaration was aimed, consented to sacrifice their rights for the sake of peace: the senate gained their end, and the election of plebeians was prevented.

[43] This is the *reprehensio comitiorum:* Livy, I. 17. VI. 42. Cicero, Brut. 14 (55).

fairly. Besides it is clear that the impeachment was withdrawn in consequence of a mutual understanding.

On the whole the plebs, after the death of Maelius, made visible advances notwithstanding, in securing and enlarging the rights they still retained. In 324 the consuls so obstinately refused to proclaim the dictator nominated by the senate, — probably under the plea that he had not been confirmed by the curies, — and the juncture was so pressing, that the senate laid aside all scruples, and called on the tribunes for aid, to give its ordinance the force of law by procuring the assent of the plebs: and their threat to arrest the consuls, if they persevered in resisting the senate, compelled them to obey[944]. Thus both parties began to rise above the paltry interests of their several orders, to higher views of government and general representation; and the people no longer regarded the dictatorship as necessarily directed against them. The next year, 325, a fixt and low valuation of the head of cattle, in which fines had hitherto been imposed, was settled by a consular law. It was received with gratitude by the people: and the anxiety of the consuls to anticipate the tribunes, on hearing that they were about to bring in such a measure, shews a cheering growth of amicable feeling[45].

The Twelve Tables had unquestionably restored the right, given to the centuries by Servius, of decreeing war and peace. Dependent as they were on the government, the senate might have adhered to the legal form, without fear of seeing its wishes frustrated: and for the moment it was no very important advantage, when the tribunes in 328 prevailed in getting the declaration of war against Veii brought before the centuries[46]. Still

[944] Livy, IV. 26.

[45] Livy, IV. 30. Lex pergrata populo. Cicero de re p. II. 35. Levis aestimatio pecudum. An ox therefore was already worth more than a hundred ases. See above, pp. 231, 303.

[46] Pervicere tribuni denuntiando impedituros se delectum, ut

with a view to aftertimes, and as a recognition of the fundamental principles of the constitution, it was a great step: and so the tribunes deemed it: for henceforward, except during that period of desperate wretchedness which preceded the Licinian laws, they no longer obstruct the levies for the legions.

After this the senate saw itself compelled to allow consular tribunes to be elected, along with a warden of the city: and in the course of thirteen years it only succeeded twice in forcing consuls on the people. The first time, in 331, a bill, which proves that the power of the tribunes was reviving, gave immediate occasion for efforts to prevent the possibility of a plebeian's being elected. Down to this year the Annals make no mention of any commotions during this period on the subject of the old agrarian law of Cassius, such as had agitated the republic in earlier times. Yet the public domains, now that Rome had again lifted up her head among the states around her, must have received great additions, especially in the last seven years, since the decisive victory gained by the dictator, A. Tubertus. The possessors of the old domain paid no tax on the produce of their arable lands, even so late as in 331: for the tribunes of that year demanded that such a tax should be raised and applied to paying the soldiers, and that a part of the public lands should be divided among the plebeians[947]; that is to say, of the newly-conquered ones. The old possessions might now be allowed to remain in the hands of those whose claims were supported by so long a term of enjoyment. Livy's account would lead us to suppose that this bill produced no sort of effect; especially as the

consules de bello ad populum ferrent, omnes centuriae jussere. Livy, IV. 30.

[947] Agri publici dividendi coloniarumque deducendarum ostentatae spes: et vectigali possessoribus agrorum imposito in stipendium militum erogandi aeris. Livy, IV 36.

commotions caused by the agrarian question in 338 and 339 were apparently much more violent. If however his statement, that the tribunes in those years brought in a bill for the division of the conquered lands, may be taken literally, so as to infer that this was the whole of their demand, the reimposition of the tenth must either have been given up, or it had already been carried; though no doubt the tax was not paid honestly.

For the law on this point may possibly have stood just as it did with regard to the elections of consular tribunes. The silence of the Licinian law on the subject is a complete proof that about the year 380 this tax was really levied: and if it had not been employed in paying the army during the latter part of the Veientine war, the tribunes would not have consented without opposition, as they did after the year 354, to the levy of a property-tax from the plebs. The agrarian law which they proposed in that year[948], undoubtedly related to the raising of the tenth, and was attended with success as complete, and even more permanent, than their endeavours to secure that the consular tribunes should at length be fairly elected. Previously however the obligation may generally have been eluded, though now and then fulfilled under extraordinary circumstances. For the contributions by which the patricians tried to shew, when pay was introduced, that they did not mean to claim any exemption from the burthen*, were probably drawn from the tenth, not from a property-tax. That the agrarian laws of Maecilius and Metilius, if they related to the tithe on the domain-lands, as well as to the partition of newly conquered ones, had in fact only to provide for the fulfilment of regulations already existing, and that the tithe had been legally reestablisht in 331, may be inferred from another bill, which excited violent commotions in the second of the above-mentioned consulships, in 334.

[948] Livy, v. 12.

* Livy, iv. 60.

The epithet, *classici*, by which the questors of the treasury were distinguisht from the judges of blood[949], until the latter questorship sank into oblivion, certainly refers to their having been elected ever since the time of Publicola by the centuries; whereas the other questors down to the decemvirate were appointed by the curies. Of the former there were only two, when in 334 the consuls themselves proposed to double their number. For this there was no motive, unless their business had very much increast; as must have been the consequence on the reestablishment of the tenth; especially as that measure was brought forward with a view to the introduction of pay, and consequently led to payments to be made in the camp. It looks as if on this occasion again the bill was laid in the first instance before the patricians[50], and that the plebs was only to have had the right of assenting to it. But the tribunes refused to make the motion without which this assent could not be obtained[51], unless the newly created places were secured to the plebeians. When the imposition of the tax

[949] This epithet, which would have been lost but for Lydus, has been preserved in a statement which is strangely distorted: I. 27. In the year 485 κατεσκευάσθη στόλος, καὶ προεβλήθησαν οἱ καλούμενοι κλάσσικοι, οἱονεὶ ναυάρχαι, τῷ ἀριθμῷ δυοκαίδεκα κυαίστωρες. Here again Gaius is his source, but is not chargeable with the absurdities that disfigure this passage. Lydus added the number eight, to which the board of questors was raised in that year, to the four it had previously consisted of, and coined his etymology for himself. Everybody knows how far the Romans in those days were from building a fleet.

[50] Quam rem—a consulibus relatam, cum Patres summa ope approbassent, consulibus tribuni plebis certamen intulerunt, ut pars quaestorum ex plebe fieret. Livy, IV. 43.

[51] This was the way in which the tribunes originally interposed against an ordinance of the senate, to prevent its acquiring the force of law: the government however often carried it into execution notwithstanding: *si quis intercedat senatusconsulto auctoritate se fore contentum:* Livy, IV. 57. In the latest ages of the republic indeed

was once determined upon, it was of the last importance to the one party, that this questorship should be filled by none but members of their own order, so that the small amount of their payments might be kept secret; while the other party was no less concerned in having plebeians to levy the tax strictly, that the amount of the supplemental taxation on the property of the plebeians might be kept as low as possible; and moreover that all fictitious entries might be taxt, for the sake of checking the disposition to make them. Hence the patricians withdrew their measure: the tribunes on the other hand brought it in of themselves with the above-mentioned amendment. Had the ancient separation between the orders been still subsisting in all its rigour, they would have threatened each other with the same animosity as before the decemvirate: but, as it was, the interrex L. Papirius was able to effect a compromise, that the election should not be restricted to either order. By this it is true, the plebs gained nothing for the moment, except the recognition of their right: they well knew that they should be defrauded of the enjoyment of it, as in the case of the consular tribunate. But they relied on the sure operation of time, which was all in their favour; and they were not disappointed. Eleven years after, in 346, the election of the plebeian candidates was carried: and now the fraudulent compromise was its own punishment; for at this first election three of the questors were plebeians. Thenceforward these elections no longer appear as an occasion of contest: and it may be conjectured that the houses soon became willing, by returning to the proposition of the tribunes, which they had once so vehemently rejected, to retain

every ordinance of the senate which the tribunes opposed, was called *senatus auctoritas*. From the instance just cited it is clear that in 348 the tribunes contended at least that an ordinance appointing a dictator required the assent of the commonalty.

the half of an office in which the plebs would naturally wish to limit their share as much as possible.

This was the first advantage, productive of immediate consequences, gained by the plebeian cause after the decemvirate. After this the oligarchy was driven back step by step, notwithstanding the obstinacy with which it often maintained its ground. Henceforward the Roman people was victorious over the patricians, as the nation was over Italy; by unwearied perseverance in seemingly trivial beginnings, by zealous exertions for small advantages at the outset, by alertness in seizing every favorable moment, by unbending patience and care in times of difficulty that at least they should not lose ground; and finally by redoubled energy in using the forces they had long been collecting, when the fulness of time was come, by calmness in securing the decisive victory, and prudence in gathering its fruits.

When Sylla increast the number of the questors, his object was to fill up the vacancies in the senate[952], where a person, after serving the office of questor, took his seat by right, unless he was excluded as unworthy by the next censors. This must have been an extremely old regulation: and without doubt the plebeian questors were admitted into the senate from the very first. The earliest distinct mention of a plebeian senator occurs nine years after this time: a person who had had a seat in the senate even for five or six years, might perhaps be deemed an old member, as P. Licinius Calvus is termed*: if so, he may have gained his rank through the questorship. There were some plebeian senators however even so early as in 344; for in that year the patricians met together to appoint an interrex[53], that is assuredly, not

[952] Tacitus, Annal. XI. 22. Viginti creati, supplendo senatui.

* Livy, V. 12. Vetus senator.

[53] Res publica—ad interregnum, neque id ipsum (nam coire patricios tribuni prohibebant) sine certamine ingenti, redit: Livy, IV.

the curies, but the patrician members of the senate: such meetings would never have taken place unless the assembly had ceast to be an exclusively patrician one. The nature of the interreign, it is manifest, was now changed. The first interrex is no longer the first senator: nor do others follow him according to rank and seniority: they are chosen by the rest of the body. The ancient privileges of the decury of the Ten First had expired.

Henceforth every army that took the field was accompanied by a questor; though as yet he had only to superintend the sale of the booty, the produce of which was now usually divided among the legion, or if not so, was at least lodged in the *aerarium*, the common treasury of the state[954]; and no longer in the *publicum* of the patricians. This again was unequivocally a consequence of the general legislation. The plebeians were no longer revolted by having to see their prizes appropriated by the curies. The legions however were the more determined on claiming them as their due, because, notwithstanding the proposition of the tribunes, no pay was yet given, though the service in the field had been lengthened. Hence in 341, when the consular tribune, M. Postumius, after promising his men the plunder of Bolae, before they stormed it, broke his word, they fell into a rage which drove them to a crime till then unheard of.

His withholding the spoil however was not the only wrong that roused their fury. They could not endure that the land they had conquered with unpaid services should belong to the patricians. At the beginning of the present period, in 312, colonists were sent to Ardea. It is manifest that this colony, founded at a time when the

43. The only previous instance of such a *coitio*, in 311 (Livy, IV. 7), is apocryphal; for T. Quinctius most certainly was not interrex, but dictator.

954 Venditum consul sub hasta in aerarium quaestores redigere jussit: Livy, IV. 53. After the decemvirate we hear nothing more of the *redactio in publicum*: see above, n. 386.

plebeians were utterly bowed down and opprest, must have been a patrician one: and the demand made by the tribune Poetelius in the same year, that the consuls should bring forward a motion in the senate for an assignment of land to the plebeians[955], is a complete proof that they had been past over. Nothing was gained by it: and it is not till the year 337, after the reestablishment of the tithe had apparently been decreed, although it had not yet been carried into effect[56], that we read of an assignment of land, which was unquestionably for the benefit of the plebeians. When Lavici was taken in that year, the senate forestalled the demands of the tribunes by an ordinance that 1500 colonists should be sent thither. The allotments were the ancient *heredia* of two jugers[57]: and the fundamental Roman number is still retained, but with this alteration, that the quantity of land divided now amounts to 3000 jugers, whereas in old times it was shared among 300 burgesses[58]. The

[955] Livy, IV. 12.

[56] See p. 429.

[57] Livy, IV. 47. His expression, *coloni ab urbe missi*, if he can be supposed to have paid the slightest attention to accuracy, excludes the Latins. Nor does Lavici appear among the Latin colonies: it must be considered as the centre of a κληρουχία, like Signia: see note 193.

[58] The number of the colonists in a Latin colony planted by Rome after the destruction of the Latin state bears no marks of the ancient typical forms, but must have been determined in every instance by the circumstances of the case. But that of the 1500 colonists sent to Lavici is connected with the constitution of the Legion at that time, when, if complete, it contained 3000 men, five cohorts of 600 each: see Vol. I. n. 1093. From the earliest times assignments of land were the rewards of military service (above, p. 163, n. 356): and if they could only be granted to a limited number, the veterans must have had the preference. Their number was merely sufficient to form one legion (above, p. 122), supposing 150 were taken from each tribe: hence 3000 colonists were sent to Vitellia in the year 360. But in the present instance there were but 3000 jugers to divide; and therefore either ten tribes might be selected by lot, and each send its full contingent, or each of the twenty might send half its

colonists now are all plebeians, as anciently they had all been taken from the houses. This however was but a poor compensation, as they had received no share either in the territory of Fidenae, or in the previous conquests that must have accrued from the decision of the struggle with the Aequians. Hence in 338 and 339 two of the tribunes brought forward a comprehensive agrarian law. This the patricians averted by gaining a majority in the college: perhaps the demand may have been unreasonable[959]. Among the tribunes of the next year they had still more adherents: so much was the constitution even of the tribes under the controll of the censors. Bolae being taken in the next campaign, one of the tribunes, L. Sextius, insisted on having allotments in its territory assigned to the legion that had conquered it[60], and at the same time on the general execution of the agrarian laws. Had this been granted, tranquillity might have been preserved; but the patricians were as loth to part with the newly acquired lands, as with their old possessions. The army was detained in the field. This prolongation of a service, the expense of which fell wholly on the soldiers,

contingent. A statement that the former was the case has been preserved in Livy; only it is misinterpreted, and referred to the levies for the field, and consequently to the juniors: IV. 46. At the beginning of the year in which Lavici was captured, *delectum haberi non ex toto passim populo placuit. decem tribus sorte ductae sunt, ex his scriptos juniores—ad bellum duxere.* It must be observed that the command of the supposed half legion is nevertheless given to two military tribunes, that an army of reserve is formed at the same time, and that it is found necessary to create a dictator.

959 This would certainly be the case, if Livy's statement in IV. 48, which expresses his own distinct opinion, be correct.

60 Livy, IV. 49. Zonaras, VII. 20, ascribes the demands to the soldiers themselves, places them after the death of Postumius, and assumes that a general division of land was then effected: *τὴν χώραν, οὐ τὴν αἰχμάλωτον μόνον, ἀλλὰ καὶ πᾶσαν προσένειμαν ἑαυτοῖς τὴν ἐν τῷ δημοσίῳ τότε τυγχάνουσαν*—in direct contradiction to Livy, IV. 51, *jacere tamdiu irritas sanctiones*, etc.

and for which they were to receive no recompense, was designed to harass and insult them. Probably however it was a part of the plan to let the day of voting on the tribune's bill pass by. Postumius was sent for to the city, to plead in behalf of an act of injustice, in support of which his collegues were perhaps lukewarm or reluctant. The tribune threatened that the men might not always be willing to shed their blood quietly for nothing. *It shall be the worse for mine,* exclaimed Postumius, *if they do not keep quiet.* These words found their way to the camp, where the questor was holding an auction of the booty, the detention of which had incenst the soldiers. A tumult arose, which when the questor, as the general's representative, fancied he could restore obedience by severity, grew into a complete uprore: a stone was thrown at him, and struck him. On this offense Postumius sat in judgement, and ordered inhuman punishments without any moderation. The soldiers took the part of their comrades, whom they saw led to a cruel death. Postumius thought to overawe them by his inflexible sternness: but he fell in the mutiny, in which all restraints were forgotten.

This outrage proved advantageous to the oligarchy. The plebeians found themselves under the necessity of allowing an election of consuls, and of acceding to an ordinance of the senate and curies, directing that the consuls should institute an inquiry into the death of Postumius[961]. It was conducted with temperance: but the territory of Bolae remained in the hands of the patricians. The demand of the plebs seemed to have contracted a stain; and no tribune renewed it: still this could not hurt the cause long. The remainder of the five

[961] Livy says, IV. 51, that it was left to the plebs to commit the special inquiry to whomsoever they chose, and that they entrusted it to the consuls. This is quite impossible: the plebs can have had nothing to do with the matter, except to give the usual confirmation to an ordinance of the patricians.

years, during which the republic was governed by consuls, past away in commotions on the agrarian question, which were hindered from producing any result by the adherents of the ruling order within the college of tribunes itself. The election of plebeian questors however could no longer be prevented: and it was only by artifices that a similar result was averted, when the patricians found themselves compelled to permit an election of consular tribunes for 347: after which fifteen years elapst without interruption before consuls were again forced upon the people.

But though the name of the new magistracy remained the same during the whole of this period, the office, four years after its reestablishment, was remodeled in the manner mentioned above; so that the number of the college was raised to six, the pretorship incorporated with it, and the censorship deprived of its previous preeminence and united to it. The nature of this change I have already explained: and I observed that, though the evidence which would lead us to suppose that the college of tribunes was chosen by the tribes, is neither to be taken as conclusive, nor to be wholly rejected, it is manifest that the election of the censors can no longer have been left to the curies, and that their office was then for ever deprived of its pretorian jurisdiction[962].

This sacrifice of valuable privileges, by men who had shunned neither dangers nor crimes to usurp them, was probably not made so wholly without a struggle as Livy's silence might induce us to imagine. The abandonment of them however for the sake of restoring concord and goodwill shews that the senate no longer considered itself as the representative of a particular faction, but as the common government of the republic at large. The truce with Veii, which had interrupted a war waged on account of a crime so atrocious as to justify the extremity of

962 See pp. 392-395.

vengeance, had expired; and the regular renewal of hostilities opened unbounded prospects, if Veii were to fall. Equal to Rome in size, and only twelve miles distant, this city sealed Etruria against the Roman arms: but, though it was no longer formidable, to reduce it required exertions of greater magnitude and duration, than any the Roman people had been called upon to make since the introduction of the consulship. During the last generation the republic had been recovering from the disease which had long been preying upon her: and the stories of old days, how the commonalty had purposely prevented the victory of a patrician tyrant, though by its own ruin, had long sounded strange. At the same time the plebeians were resolved that, while they fought the battles of the state, they would not do so like mere bondmen, but would share their fruits as citizens. Under such circumstances an internal connexion between facts may be safely inferred from their occurring simultaneously; and it cannot be doubted that the tribunes, before they obtained the consent of their order, which was now indispensable, to the declaration of war against Veii, stipulated for the redress of pressing grievances. Fifty years earlier the senate in such a case would have let the war drop, along with all its hopes.

The tribunate of the people too about this time underwent an important change. Hitherto a plurality of votes had always been decisive in it. The agrarian bill of 339 was lost, because the patricians gained six of the tribunes, that is, a majority. The great exertions made to obtain this majority would have been needless, if a single veto had already been sufficient: and if the four tribunes who made the cause of the consul C. Sempronius their own, could have annulled their collegues impeachment by a word, they would not have tried to mollify the people by putting on mourning and by entreaties[963]. On the other hand in 360 and 361 the bill

[963] Livy, iv. 42. 48.

regarding Veii was stopt by two of the tribunes[964]: just as the elections were in 380 by Licinius and Sextius: so that it was not in the power of the other eight to remove this impediment. Hence the limits of the time within which this innovation falls are not to be mistaken: but it is not so clear with what purpose it was introduced. It seems however that the government alone can have desired such a change, with a view of stemming the proceedings of the tribunes. One or two out of the ten would still be likely to take its side; while all hope of gaining a majority was sure to grow less and less, so long as the independence and prosperity of the people were daily becoming more firmly establisht, and while everybody could see that the power of the patricians was losing ground. I think it not improbable that the senate may have stipulated for this change in return for its concessions: and the statement that Appius Claudius, a grandson of the decemvir, and one of the consular tribunes in 352, pointed out the way in which the power of the tribunes might be broken by the interposition of their collegues, seems to refer to this very point. So long as a majority could be obtained by tampering with the elections and by artifices, there was no need of any new invention to avert obnoxious bills[65].

Had the concessions of the patricians been made with a sincerity proportionate to what would have been their

[964] Livy. v. 29: Dies dicta erat tribunis pl. biennii superioris, A. Virginio et Q. Pomponio—quod—rogationi intercessissent. These are the *intercessores legis* whom the patricians vainly strove to get re-elected.

[65] Under the year mentioned above, Livy tells us that Appius was *auctor—per collegarum intercessionem tribuniciae potestatis dissolvendae:* v. 2: though he himself refers this plan to the year 339. The counsel given by his ancestor in 274 (Livy, II. 44) is unquestionably nothing more than a misstatement, in which the intercession of an individual tribune is confounded with that of the majority, and the measure is carried back to the Appius Claudius of that day from his grandson.

importance, if they had been duly carried into effect, nothing was fairer than that the privileges they reserved to themselves should be secured, and preserved from being destroyed by the power of the tribunes, destined as it was to expand beyond all bounds. One of those concessions was an ordinance that the infantry, like the cavalry, should have regular pay. This must evidently have been one of the conditions demanded by the tribunes before they would consent to a war of such length, that it was impossible for the plebeians to remain in the field at their own charge, even if a fair share in the fruits of the conquest had been more solidly secured to them than it could be by promises[966]. The pay was meant to be raised mainly out of the tithe; and thus the levying the latter could not possibly be eluded much longer.

[966] I do not mean to claim any merit for passing over Livy's oversights and errours in silence: an intimacy of many years standing acts on an ingenuous mind like a tie of piety, which makes it reluctant to unveil defects: but here is an instance which I cannot leave unnoticed. On the introduction of the pay he says, iv. 60, *non a tribunis plebis unquam agitatum, non suis sermonibus efflagitatum:* and yet he had written in IV. 36, that the tribunes wanted to lay a charge on the *ager publicus: ostentatae spes—in stipendium militum erogandi aeris.* A writer whose memory is so treacherous, ought not to be cited as an authority against us, when we silently correct him.

ON THE PAY OF THE TROOPS.

I HAVE already intimated in the former volume that the Veientine war cannot have been the occasion on which the practice of giving the troops pay was first introduced; that the erarians must undoubtedly have always continued to pay pensions to the infantry, as single women and minors did to the knights; that the change consisted in this, that every legionary now became entitled to pay, whereas the number of pensions had previously been limited by that of the persons liable to be charged with them[967]; and hence that the deficiency was supplied out of the *aerarium*, from the produce of the tithe, and, when this failed, by a tribute levied even from those plebeians who were themselves bound to serve. Not only however is it utterly inconceivable that the paternal legislation which introduced the census, should have allowed that, while the wealthiest knights were to receive pay, the infantry was to serve without any kind of wages: I can also bring forward unequivocal indications that both services were originally paid according to the same system.

Polybius, it is well known, states the daily pay of a legionary to have been two obols[68]: which,—since he takes

[967] Vol. I. p. 474. These pensions were naturally named *capita*, inasmuch as each answered to a *caput*: notice of this has been preserved in Lydus, I. 46. Τότε διωρίσθη τοῖς στρατιώταις παρασχεῖν τὸ δημόσιον —τὰ λεγόμενα κάπιτα.

[68] VI. 39.

a drachm as equivalent to a denary, and since the latter, in paying the soldiers, even after the introduction of a small currency, was not reckoned, as in all other transactions, at 16 ases, but at 10,—are equal to $3\frac{1}{3}$ ases, and in 30 days amount to 100. This was the *εἰσφορὰ* of ten drachms levied by the last Tarquinius; that is to say, an order given to a foot-soldier for a month's pay. A knight's monthly pay, if his yearly pension of two thousand ases be divided by twelve, does not come to anything like an even sum: here however, as in all calculations of payments in very remote times, we must have recourse to the year of ten months, which gives us two hundred ases a month; that is, just double the pay of the foot-soldier; a proportion which has been adopted in times and countries extremely different from each other[969]. The triple pay which the Roman knights received in aftertimes[70], and which was first introduced in 354 by the military tribune Cn. Cornelius Cossus, was undoubtedly designed as a compensation to those who served with their own horses; and it did not become general till later[71]. Originally it seems to have been

969 The Peloponnesians gave a heavy-armed foot-soldier three obols, a horse-soldier a drachm: Thucydides, v. 47. Sixtus IV, in his treaty with the Swiss, promist every foot-soldier 5 florins a month, every horse-soldier 10 florins: Meyer von Knonau, I. p. 255.

70 Polybius, VI. 39. A centurion had only a double *stipendium*: and the same proportion was observed in the plots of land allotted in the military assignments, and in the donative at a triumph.

71 Livy, v. 12: *Triplex stipendium equitibus dederat* (*Cossus*). The knights had begun to serve with their own horses two years before: for this, Livy (v. 7) tells us, they had a *numerus aeris* granted to them: a remark which he ought to have postponed till the year 354. When the legionaries in the year 408, being irritated against the knights, demanded *ut de stipendio equitum* (*merebant autem triplex ea tempestate*) *aera demerentur* (VII. 41), this probably referred only to those who had an *equus publicus*, and yet at the same time received the third *stipendium*. For, as was well observed by Radbod Hermann Schele, the 10000 ases for a war-horse, when distributed

the pay of the commanders. For this is the proportion in which the three classes of the *spolia opima* were rewarded: the general received 300 ases: the other two gradations, 200 and 100, were certainly intended for the cavalry and infantry[972].

A patrician orator in Livy argues that the soldiers ought to serve the whole year through, because they received a full year's pay[73]. This however is merely an oversight of the historian's, whose mind was engrost by the state of things in his own days: at the time when he wrote, a full year had long been the stipulated term of a soldier's pay as well as of his service. The pay for the whole twelvemonth, or twelve hundred ases reckoned as equal to three pieces of gold[74], was then taken as a unit, and was termed *stipendium*, and paid in three instalments[75]. This is what gave rise to Livy's notion: which seems indeed to be favoured by the fact that the knights received pay for the whole year. Nothing however would be more natural than that they should in all points have been better off: but as they were forced to

over 10 years, make 1000 ases a year, which come more nearly than he could conjecture (not knowing of the mode of reckoning by the year of ten months), nay which exactly amount to a year's pay.

[972] This explanation of the matter is my own: the statement on which it is grounded occurs in Festus, Opima spolia, and in Plutarch, Marcell. c. 8, by the help of which passage Ursinus has restored that of Festus, with great skill. Compare Perizonius, Animadv. 7. p. m. 263, 264.

[73] Livy, v. 4: Annua aera habes, annuam operam ede. An tu aequum censes militia semestri solidum te stipendium accipere?

[74] A gold-piece was worth a hundred sesterces: so that the denary was now reckoned at 16 ases in this as well as in other payments. The pay having first been doubled, and then tripled, the soldier could not complain that this mode of reckoning was now applied to his wages.

[75] Hence it is said of Domitian, *quartum stipendium addidit*: Suetonius, Domit. 7. Compare the passages also in notes 970 and 972.

keep their charger and a mounted follower throughout the year, this was far from giving them any advantage over the foot-soldier, provided the latter was paid for every month during a part of which he served in the field. To have paid him for the remainder of the year, which he spent at home, would have been a piece of profusion almost incredible even during the highest lustre of the monarchy, but utterly beyond the scanty means of the republic during its first centuries. Moreover we find a calculation on the footing of monthly instalments in the scale already mentioned of the rewards for the *spolia opima*.

The changes made in the property-tax by Camillus and Albinus during their censorship in the year 342* were occasioned by the introduction of pay for the whole army. It is probable that the pensions paid by individuals to the knights were abolisht: which pensions may in some cases have been extremely burthensome; while in others less was levied than would have been if the single women and orphans had been taxt at the ordinary rate: the censors however had still the right of charging them on a higher footing than others. At first for some years the tribute prest very heavily on the plebeians; just as the tribunes had said, when they warned them that, while their duty would become more laborious, they were on the point of being encumbered with a tax, which, though it would benefit the poor man of the last class and the accensus, would prove far more burthensome than unpaid service to persons in better circumstances. Hence in 354 they forbad the levying it, brought forward an agrarian bill, and did not give way till a fair election of plebeian military tribunes had been accomplisht[976]. Now unless the multitude had obtained some alleviation of their burthens, they would have taken a mischievous pleasure in disappointing the ambition of their leaders; just as thirty years later they shewed themselves indifferent about the

* See note 891.

976 Livy, v. 12.

consulship, and bent all their thoughts on a reduction of debts and an assignment of land. Perhaps the agrarian law just mentioned may have had no other object than to enact provisions for securing the regular payment of the tithe[977]. That this object was effected, may be perceived from the cessation of the vetos; which are never heard of again down to the period of desperate distress just before the commotions excited by the Licinian laws.

Thus, after half a century of fluctuating and conflicting movements, the plebeians, having the irresistible force of things on their side, recovered both their civil rights and their prosperity, and gained concessions from the oligarchy which could never be recalled. Could their ancestors have lookt up from their graves, the rights which were still a subject of dispute, would have seemed to them a mere trifle in comparison with the points already conceded and settled. The most violent struggle between the two parties would have struck them as an amicable discussion compared with what they themselves had witnest. They would have seen plebeians in the senate; as yet indeed merely a few; but those few were not regarded as intruders. They would have seen plebeian women in the noblest patrician families, and held in equal esteem with the matrons of the first estate. In the calm mood now daily gaining ground, it was found easier to digest particular grievances, such as in troubled times would have roused bitter resentment: during days of repose or of glory, mutual goodwill and forbearance gained strength between the government and the people. The forein relations of the republic too had undergone a very prosperous change. The Roman territory, which had been the theatre of war for the last thirty years before the decemvirate, had not been violated for a long time by an enemy: and in Latium the dominions of the republic had again reacht the limits of the territory of the kings.

[977] See note 948.

THE WARS
DOWN TO THE LAST WITH VEII.

THE campaigns during this period begin to be in many instances so important, both from what was achieved in them and from the consequences they led to, that a circumstantial relation of them could no longer be censured as a tedious recital of petty occurrences, proceeding from a fond predilection for the subject: but almost all the details in our accounts are still of a very suspicious character. Thus we must content ourselves with saying that in 306 M. Horatius gained a glorious victory over the Sabines; an extremely memorable event, since the Sabine wars, which for more than twenty years had been continually breaking out afresh, cease from this time forward, until, after the lapse of a century and a half, the powerless state was madly roused to take up arms, and sank in a few days into final ruin. During the whole of this period the Sabines are never named in history, though the cities on their borders, at one time Tibur, at another Falerii, are waging war against Rome. In the second and third Samnite wars the Roman troops pass through their territory without any obstruction: nor could an army have been sent into Apulia, had not their friendship been completely secured. If the two states were not united by a defensive alliance, which indeed could scarcely have vanisht from history so as not to leave a trace behind, still the amicable relation between them must have been grounded on solemn treaties: and we

may warrantably assume that the victory of M. Horatius was followed by one. It probably cemented them together by a common franchise: and if the increase of 20000 in the numbers of the census in 256 was the effect of a relation of this kind, which was subsequently abolisht[978], it is probable that the Sabine isopolites were the chief part of the 35200 heads, forming the excess of the census of 364 above that of 295, which unfortunately is the next we can compare it with[79]. We find an express statement that the Sabines had the freedom of the city without the right of voting. This does not suit well with the state of things in the time of Romulus, to which it is referred, and with the relation between Rome and Quirium[80]: and assuredly there is no necessity for confining it to the half century after the victory of Curius, during which the Sabines, before the two last tribes were formed out of them, were municipals of the second class, or sympolitan subjects.

The cause that inclined them so strongly to peace, seems to have been that the nation was exhausting itself

[978] Vol. I. p. 562.

[79] In addition to these however, that census must have contained the population of the Etruscan districts which were formed into tribes after the departure of the Gauls: and other leagues may have been omitted by Livy, as well as that with the Sabines. At all events the forces on the Alia shew that during this period of vigour and prosperity the number of the genuine Roman citizens had very much increast.

[80] Servius, on Aen. VII. 709. Post Sabinarum raptum, et factum inter Romulum et T. Tatium foedus, recepti in urbem (instead of *civitatem*) Sabini sunt: sed hac lege, ut in omnibus essent cives Romani, excepta suffragii latione. If we look upon this passage as containing a view of the earliest times, Rome and Quirium would have been united by this league in the relation of isopolity: and the meetings of the two kings and their senates might at least be compared with the Latin holidays: the reign of Romulus as sole king might represent a usurpation, like that of Tarquinius over Latium. At all events after the election of Numa the legend exhibits the two communities in a totally different relation.

in emigration. Numbers of the warlike youth of the parent race, which was not able to extend its borders westward, may probably have joined their countrymen, the Samnites, who immediately afterward appear as conquerors in Campania[981], and ere long in Lucania; and who, mixt with Oscans, served in multitudes as mercenaries under the name of Campanians in Sicily.

In the same year L. Valerius vindicated the honour of the Roman arms against the Aequians on mount Algidus. Their army was superior to his; and he kept within his entrenchments to avoid being forced into a battle. But when the enemy, growing tired of inaction, sent out detachments to forage at a distance, he seized the opportunity to fall upon those who were left behind: their camp was stormed and taken. Two years then past away quietly: in the third (309) the Roman territory was surprised by a marauding inroad of the Aequians, who advanced to the Esquiline gate. This was the last predatory incursion with which they terrified Rome. The consuls speedily took the field with three legions[82] the day after the enemy appeared before the city: but he had already retired. The next day they overtook him at Corbio: the third ended the campaign with a victory in which they retook the booty he was carrying off: that is to say, unless this story again be fictitious: for it is certainly very surprising that no mention was anywhere made of any triumph in consequence of this war[83].

In both years Livy speaks of the Volscians along with

[981] Diodorus (XII. 31) dates the origin of the Campanian people, that is to say, the admission of the Samnites as joint setlers in Vulturnum (see Vol. I. p. 96), in Ol. 85, 3, or, according to his system of comparative chronology, in the year of the city 310.

[82] Each consul commands one wing, a lieutenant the *media acies* (Livy, III. 70); that is, the legion of the veterans. See p. 121, note 259.

[83] Livy, III. 70, makes this very remark, and does not dissemble his surprise.

the Aequians: but the seat of the war is on the Aequian border, in the north of Latium. The name of the Volscians appears to have been frequently used as a general one for all the Auruncians: if this be not the case here, at all events these Volscians were probably mere volunteers, or cohorts from the towns on the upper Liris. They cannot have been the Antiates even in the year 312, when the troops that assist the commonalty of Ardea are called Volscians, and only their commander Cloelius an Aequian: for the soldiers who are suffered to return home, take a road leading through the territory of Tusculum.

Since the dissolution of the Latin state, the Rutulians of Ardea were again become insulated: nor were they dependent on the soverainty of Rome: for in 311 the two cities entered into an alliance. Two years before, the Ardeates had agreed with the people of Aricia to refer their disputes to Roman arbitration. Corioli had been lying in ruins ever since its destruction by the Volscians[984]; and by the national law of Italy the bordering towns were allowed to occupy the vacant district: how it happened that Ardea and Aricia were the only ones that laid claim to it we are not told. The Romans adjudged that neither was entitled to it, and that the waste land had devolved to themselves; probably on the ground that the Latin state, agreeably to the rule of succession observed by the houses and curies, would have incorporated the territory of any of its towns which had been destroyed, with its own; and now that Latium was dissolved Rome claimed to have stept into its rights. This decision has been ascribed by ignorance and prejudice to the plebs, though the concilium of the populus, the only body that we should expect to act in such a case, is expressly mentioned[85]: and under the delusive persuasion

[984] Above, p. 259, and note 198.

[85] See Vol. I. p. 425, note 988. The district in question lay in the region of the Scaptian tribe; and Scaptius is the name given to

that it was the plebs, whose groveling spirit dictated the unseemly award, the writers who relate it declaim about the stain it flung on the honour of Rome, and tell us a great deal about the efforts made by the senate to appease the indignation of the Ardeates. All this is a baseless fiction. The alliance of 311 was probably just as much desired by the ruling party at Ardea as by the Roman patricians: for though it was not till the next year that matters came to a secession and to an open feud with the commonalty at Ardea, assuredly discord had long been prevailing there.

Every Italian town without exception undoubtedly had a plebs[986]. That which is spoken of at Ardea as distinct both from the artisans (the freedmen), and from the ruling body (the Rutulian houses), must accordingly have been, as it was at Rome, the aggregate of the free husbandmen[87]: and it manifestly grew up in a similar manner, from the acquisition of Latin townships, which the dissolution of the Latin state furnisht an opportunity of increasing. To these were added municipals from towns which had the freedom of the city. The parties were ripe: a courtship, as was often the case among the Greeks, as was the case at Florence, finally arrayed them in open hostility[88]. A beautiful plebeian maid was wooed by a

the person who claims it for the Roman people: a circumstance which makes it very doubtful whether such a person ever actually existed. In the sixteenth and seventeenth centuries the population of many villages in the territory of Sienna became extinct, whereupon their lands were annext to the adjacent one. The same thing happened in Germany after its subjugation, and after the thirty-years war.

[986] Compare Vol. I. p. 405, and foll. The Oscan table mentions *tribuni plebis* among the magistrates of Bantia.

[87] When they had renounced the authority of the government, *urbem quoque omnis etiam expertem ante certaminis, multitudine opificum evocata, obsidere parat (plebs)*. Livy, IV. 9.

[88] Aristotle, Polit. v. 4. At Florence Buondelmonte's breach of faith in 1215. G. Villani, v. c. 38.

man of her own order, and by a member of one of the houses: the former was favoured by her guardians, the latter by her mother. The guardians alone had the right of disposing of her hand with an authority like a father's: yet the magistrates, with glaring injustice, decided, in behalf of the suitor of their own order. The guardians carried the maid away by force from her home: the quarrel led to a violent fray: and the plebeians were forced to quit the city. The artisans went out to join them: and Cloelius, an Aequian general, was induced, by pay or the promise of plunder, to bring a body of troops to their aid. On the other hand the consul M. Geganius, came to relieve the burgesses. He drew lines round the army of Cloelius, and did not allow the troops to march out, till they laid down their arms and delivered up their general*. On their way home they were attackt by the Tusculans, and almost all slain.

After these events the obedience of the plebs, if it submitted, may have been so insecure, that the burgesses were glad to recruit their exhausted population by forein colonists. Ardea appears in the sixth century as a Latin colony: it had perhaps become one in 312. We know historically that patrician triumvirs were sent thither from Rome; that they did not assign any portion of the old Ardeate territory, but only that which the Romans had pronounced to be their own; and that from this they granted allotments first to the Rutulians, and then to the Roman setlers. These were undoubtedly *heredia*. The Romans did not form the populus, as in the Romulian colonies: they can only have come in as a new tribe: and is it probable that the Aricians were really overlookt on this occasion, as they have been by our historian? If they too were conciliated with a share, the community thus composed might afterward be reckoned among the Latin colonies: and the measure of the triumvirs might

* See pp. 268, 269.

well be so obnoxious, not only to the plebeians, who can have received no share at all, but also to the patricians, that they acted wisely in changing their abode, and taking up the freedom of Ardea to escape from general odium[989].

It is possible that the expedition of Cloelius may have been no interruption to the peace between the two states, which was secured, we must believe, by solemn treaties, and was very desirable for the Romans during their war with Veii: it lasted till 324. In that year the Aequians and Volscians,—who in this instance must assuredly have included those of Ecetra,—raised armies of pickt troops, who were bound by awful oaths to fight to the death[90]: they were sent to mount Algidus. On the prospect of so arduous a war, the senate decreed the appointment of a dictator, and without doubt at the same time named A. Postumius Tubertus. The consuls, unwilling to place themselves under a superior authority, refused to proclaim him, probably under the plea that the assent of the curies was still wanting: but the tribunes declared that they recognized the appointment as valid, and that they would maintain the execution of it by force.

The name of the dictator Tubertus is associated with a fearful story, and with a dim recollection of greatness such as few of his contemporaries left behind them. The older annalists must have been fully aware that his victory was the crisis which decided the contest with the Aequians[91]. He called out the full muster of the classes, without allowing any excuse: one of the consuls was left in Rome with the city-legions; the master of the horse,

[989] Livy, IV. 11. Cum plebem offendissent, ne primoribus quidem Patrum satis accepti.

[90] Lege sacrata delectu habito. Livy, IV. 26. The manner in which such a levy was made appears in the account of the Samnite war.

[91] Hence it is adduced by Gellius, XVII. 21, in his list of memorable epochs, and is described in some detail by Diodorus, XII. 64.

outside the walls with the reserve[992]: the army was joined by the Latins and Hernicans. The enemy's power was so formidable, that the dictator, before he took the field, vowed extraordinary games in case he was victorious. The Volscians and Aequians were posted on mount Algidus in separate camps: the Roman generals a mile from them; the consul T. Quinctius on the road to Lanuvium; Aulus Tubertus, undoubtedly with a far greater force, on that leading to Tusculum. The plain between the entrenchments was for many days the scene of unimportant skirmishes. The impatience thus excited was probably mentioned in the Annals as the cause of that act of disobedience which the dictator's son expiated with his life. It was a current tradition, to which Livy has nothing to oppose except his reluctance to credit so horrible a tale, that the young man left the post entrusted to him to take advantage of an opportunity for a successful skirmish; that he returned victorious; and that his father inexorably condemned him to death[93]. At length the allies made an attack on the consul's camp in the night. While it was defended with vigour and success, that of the Aequians, which was weakly guarded, was stormed by some cohorts sent against it by the dictator: others went to relieve the consul: while Tubertus himself led the main body by a circuitous road to the rear of the troops who were assailing the Roman camp. On the eighteenth of June[94], the day of Collin and of Waterloo,

[992] Livy, IV. 27. Here again we have the four divisions of the army—see p. 122, note 260—and the *magister equitum*, as in the passages there quoted about the first dictatorships, does not attend the dictator and actually lead the cavalry, but is commander of the reserve.

[93] The story is found in Valerius Maximus, II. 7. 6, in Gellius XVII. 21, and in Diodorus, XII. 64. Livy, IV. 29, wishes not to believe it: *non libet credere:* but how unsubstantial his arguments are (*et licet*) was shewn long ago by Perizonius, S. p. 358, foll.

[94] The day was A. D. XIII. Kal. Quinctil. Ovid, Fast. VI. 721.

at daybreak, the Aequians and Volscians, who were already worn out, were attackt at the same moment by the dictator, and by the consul who made a sally to support him. They were surrounded. Vettius Messius, with regard to whom Livy's narrative leaves it uncertain whether he had the command of the army, or whether he merely found it ready in the extremity of distress to obey the voice of a man qualified to lead it, prevailed on them to form into a compact mass, and force their way to the Volscian camp, which was not yet lost. But the resolution excited by despair melted away, when, on reaching it after a bloody conflict, they found themselves surrounded there also. The entrenchments were stormed: many, who threw away their arms, received quarter; but all the prisoners, except the senators[995], were sold for slaves.

This was a decisive defeat: and its consequences, as usual, were rendered much more injurious to the allies who had sustained it, by their own dissensions. The Volscians were divided between a party which desired peace on any terms, and one which was for carrying on the war: the Aequians resolved to beg for peace. The senate required that they should become subject to Rome: and if the expression used by Diodorus is taken from Fabius, his statement, that they submitted to the Romans[96], undoubtedly acquires a weight very different from that of similar assertions, flattering to Roman vanity, in Livy and Dionysius. A truce for eight years was concluded: and it is very possible that the conquered people bound itself for this period to respect the majesty of the republic[97]. The pacific party must also have

That is, according to the Julian calendar, the 19th, but according to the old style, as June had only twenty-nine days, the 18th.

[995] Livy, IV. 29. Were they the senators of the particular towns or of the whole nation?

[96] Ὑπετάγησαν. XII. 64.

[97] Cum foedus petissent, et pro foedere deditio ostentaretur, inducias—impetraverunt: Livy, IV. 30. Majestatem pop. R. colunto.

attained its end among the Volscians; for the whole of the eastern frontier remained tranquil during this period. This was the more desirable for Rome, because during the first half of it she was afflicted by epidemic sicknesses and other scourges, the pressure of which rendered the after-throes of the late bloody war doubly painful: and the latter half was employed in the war with Veii, after the brilliant termination of which the republic was secure of being able to pour all its forces into Latium, whenever the struggle should be renewed.

This war with Veii, was the second which the Romans waged with that state during this period. Both of them were occasioned by the revolt of Fidenae; and were decided by its fate.

Fidenae, a town five miles above Rome on the right bank of the Tiber, which had originally belonged to the Tyrrhenians[998], then became a colony of Alba, and finally an Albian canton[99], seems never to have had a place among the thirty independent Latin towns. It fell into the hands of the Romans very early; and colonists were sent to keep it in subjection. We often read of attempts made by the Fidenates to get rid of these setlers, and that they were always punisht and forced to stoop beneath the yoke again: whether the fact be that this event actually recurred more than once, or that the annalists repeated the same story over and over again, to fill up the blank in the chronicles of the kings. When Fidenae however shook off the Roman yoke in 317, the colony, like every other in a town which asserted its independence, must have been expelled. But as it had subsisted for sixty years without interruption[1000], many of its members must inevitably have been connected by close

[998] When they are said to have been Etruscans (Livy, I. 15), it is through the ordinary confusion between the Tuscans and the Tyrrhenians.

[99] See p. 21. [1000] Ever since 256: Dionysius, v. 60.

ties with the old citizens, and been spared, or even have espoused the same cause. The Fidenates, on recovering their liberty, sought to strengthen themselves by an alliance with the Veientines and Faliscans. More than once their united forces crost the Anio, and advanced to the Colline gate: whenever this happened, Rome appointed a dictator. A. Servilius Priscus, being clothed with this dignity, reconquered Fidenae in 320, four years after its revolt. It was unnecessary to state that the authors of the rebellion lost their heads: but it is clear that the vengeance of the conquerors was confined to this; since nothing is said of any punishment inflicted on the town; and even the augmentation of the colony does not take place till seven years later. Hence this insurrection cannot possibly have been attended with any inexpiable outrage.

The Faliscans, whose territory lay at a distance, and was separated from Rome by that of other forein nations, were able to give up the war when they were tired of it, without suffering the retaliation they had provoked. The Veientines, whose truce of forty cyclic years had expired at the time when Fidenae placed itself under their protection[1001], concluded a new one, probably for eighty months: in 327 hostilities had already recommenced. In the same year some citizens of Fidenae were relegated to Ostia for having engaged in a conspiracy: the number of the colonists was increast; and the lands of the insurgents who had perisht in war or by the executioner were granted to the new-comers[2]. They went

[1001] Vol. I. p. 283. The truce may have been concluded toward the end of 280; the revolt of Fidenae may have taken place at the beginning of 317; and the years of the Fasti from 303 to 305 probably do not together amount to more than twenty-eight months: so that they did not remain long at peace without an express treaty,—*tacitis induciis*,—after the 400 months had expired.

[2] Livy's expressions, IV. 30—*colonorum additus numerus, agerque iis bello interemptorum assignatus*—may also be interpreted to mean

to meet their ruin. After the defeat brought on by the variance of the consular tribunes before Veii in 329, the Fidenates revolted; and these new setlers at the least, and perhaps also the old ones who had returned, and who could no longer be trusted, were massacred. This is the same year in which Diodorus, apparently following no less an authority than Fabius, places the murder of the envoys[1003] sent to them; the recollection of which was preserved among the people down to the days of Cicero by their statues in the rostra[4]. Had this murder been committed in 317[5], extirpation would have been the inevitable lot of Fidenae, when it was first taken in 320. The envoys had been sent to warn them against the revolt that was threatening to break out. They were detained in custody, like those in later times and remoter regions who went on a similar errand to some of the Italian states before the arrival of Pyrrhus. Probably they were also seized as hostages for the Fidenates who had been sent to Ostia. The fate of the latter however was a matter of indifference to Lar Tolumnius, the king of Veii: while it was of great importance to him to preclude all possibility of a reconciliation between his new subjects and their old masters. The envoys therefore were put to death by his order: and the story that he gave this order, on being askt what was to be done with the prisoners, while he was playing at dice, without interrupting his game, is manifestly either a tradition, or,

that the original number of the colonists was merely completed, and that the allotments left vacant in each century were assigned to the new-comers. But would such a measure have been attended with such long delays? Besides it is clear that what was done was the occasion of the second revolt.

[1003] Diodorus, XII. 80.

[4] Cicero, Philipp. IX. 2. Pliny, XXXIV. 11, took copies of them for the originals, which seem to have been destroyed in Cicero's youth.

[5] As Livy supposes: IV. 17.

if a fiction, an ancient one. For this foul outrage he was doomed to fall by the hand of A. Cornelius Cossus, the master of the horse; and his spoils were hung up in the temple of Jupiter Feretrius[1006]. Whether the insurgent town was taken in the same year, or not till the next, is a point on which the accounts may perhaps have differed. There can be no doubt however that it perisht in this war: the inhabitants who survived the massacre were sold as slaves; and the name of Fidenae, like that of Gabii, became proverbial for a deserted village[7].

Such in substance, only enlarged by circumstantial details of no interest to any but Romans, is the narrative we should read of the wars with Fidenae, if all the annalists had represented the contents of the earliest chronicles without adulteration, like Fabius. But this could not be the case, inasmuch as the statues of the murdered envoys, the spoils won by Cossus, and the desolate site of Fidenae, kept the events in the mouth and the remembrance of posterity. Some member of the Aemilian house found matter in legendary traditions for an apocryphal panegyric on Mamercus Aemilius: in this more dictatorships were probably ascribed to him than he ever really filled, and the exploits achieved under his auspices, as well as his own, were referred to definite years which they did not belong to. Some such impure source must have given rise to the silly story, that the Fidenates rusht out on the Romans with burning torches, and filled

[1006] Diodorus indeed is silent about the death of Tolumnius (XII. 80): but the tradition that he ordered the murder of the embassadors is so firmly establisht, that whoever places that act in 329 must also place the death of its author in the same year, or in one soon after. Fabius perhaps adopted the latter course: for under 329 Diodorus speaks only of an indecisive engagement near Fidenae: it is just after his manner to have forgotten to insert the Roman occurrences of the next year.

[7] Gabiis desertior atque Fidenis vicus,—Fidenarum Gabiorumque potestas.

them with terrour, as a supernatural spectacle: whereupon Cossus ordered his troops to give the reins to their horses, which caried their riders into the midst of the flames, and broke up the mummery[1008]. In this account the single combat of Cossus seems to have been transferred to the first dictatorship of Mamercus in 318, which may perhaps have been purely fictitious. The falsehood of this date is not indeed proved, as Livy is inclined to allow, by the argument that none but a general who had slain the enemy's general with his own hand, could dedicate the *spolia opima*: for Perizonius has shewn decisively that this notion is erroneous[9]. Moreover he might dedicate them to Jupiter Feretrius, and not to Mars or Quirinus, provided he was more than a common knight, a commander of any rank whatever[10]. But the inscription discovered by Augustus on the linen breastplate of Tolumnius, stating that the Consul Cossus had won these spoils[11], is decisive evidence that he cannot have done

[1008] This strange anecdote is grounded on the fact, that in a fire horses, if shut up, lose their senses, and rush into the brightest part of the flames. Here however the scene is manifestly supposed to be an open plain, where the smoke and strange spectacle would make the horses unruly, but could not terrify the riders.

[9] Animadv. VII. p. 262 foll.

[10] Compare the passages from Plutarch and Festus referred to in note 972.

[11] *Consulem Cossum cepisse:* Livy, IV. 20. The latter part of this chapter, from *omnes ante me* to the end, is a note completely separate from the text, and perhaps the only one of the kind to be found in any ancient author: it was evidently added after the book had been publisht, and had been read by Augustus. Hence the manner in which Cossus is spoken of in c. 32 does not deserve the blame that has been thrown upon it. Even supposing that Livy had altered that passsage after hearing of the emperor's observation, his previous errour might still have been retained in the original text of the manuscripts that have come down to us; just as *Phliuntii*, which Cicero corrected, has in the remains of the books de re p.: and yet the long addition might be inserted. To sacrifice his story, though it was entirely upset by the discovery of Augustus, could not appear necessary

so earlier than 327. This accords perfectly with the statement of Diodorus, and with what may be inferred from the fact that Fidenae was spared at its first capture. This yeai, it is true,—as was stated in the Annals, which may be always the most safely relied on wherever their narrative is the scantiest,—was a year of sickness and famine, without any military operations: but every Roman who inscribed a monument with his name, always added the titles of his offices, even of those which he had filled long before; and if Cossus dedicated the spoils at any time after his consulship, he assuredly did the same[1012]. Accordingly he would have done so, supposing that he won them in 329, the year of his consular tribunate, as master of the horse, which is expressly stated to have been the case[13]. In this instance indeed we may find a still more immediate explanation of his title. Even as consular tribune he might very fairly call himself consul, but still more so since he was pretor of the city[14], and being summoned into the field by the dictator, united the military command with that office; so that he possest the whole of the consular power. Livy's assertion that

to Livy, according to the ironical view which he takes of Rome's early history.

[1012] Perizonius, Animadv. p. 313, foll. His supposition however that the inscription was affixt at a much later period, when Marcellus dedicated the third *spolia opima*, is not happy. An offering necessarily contained the name of the donor: and had these characters happened to be destroyed along with a piece of the armour, the restoring them would have been a violation of the fundamental rule, never to repair damaged trophies. See Perizonius, Animadv. p. 250.

[13] Valerius Maximus, III. 2. 4. Servius on Aen. VI. 742. Victor, de viris illust. 25. Since, as Borghesi has shewn, the inscriptions in the Forum of Augustus may be regarded as the groundwork of the latter book, we here find an interesting proof that Augustus in that forum followed his discovery, which Livy only noticed so far as he was compelled to do so by respect for the emperor. In other passages Cossus is always styled a military tribune.

[14] Livy, IV. 31.

all his predecessors had placed the single combat in the year 318, is disproved by the statement of Diodorus: he overlookt no less an author than Fabius. Nay the statement which he found in certain annalists, and which he understands of a naval battle near Fidenae, rejecting it accordingly as ridiculous[1015], is nothing but a fragment from a story of the single combat of Cossus, in which it was stated that the spoils were won in a battle between armies in full array. The writers who related this combat eleven years before, did not indeed repeat it: they were determined however to keep a part of it; and this was the mention of the *classis*.

Propertius, either adopting some free tradition, or perhaps following Ennius, transfers the death of Tolumnius to another scene and to totally different circumstances. Cossus and the Romans were besieging Veii: the battering ram shook the walls: the Etruscan king appeared atop of the gate and proposed a pacific conference: Cossus challenged him to single combat: he came down into the open field, and fell: the conqueror struck off his head, and bore it away in triumph, with the blood trickling down on his horse[16].

The victory over Veii could not yet be followed up to a decisive issue; and the Romans were glad to make a truce for twenty cyclic years[17]. They also renewed that with the Aequians for three years, the term for which they themselves wisht for repose: the proposal of a longer respite they rejected. We do not know what induced the Volscians, whose treaties must have been separate from those with the Aequians, to try the chance of war

[1015] Classi quoque ad Fidenas pugnatum cum Veientibus quidam annales retulerunt: IV. 34. That is to say, the old books had not neglected to state that the spoils of Tolumnius were won *classe procincta:* for none but these were *opima:* Festus, Opima.

[16] Propertius, IV. 10. 23, foll.

[17] It had expired in 348, and does not seem to have been concluded before 331.

alone. That the war in 332 was against them solely, and that they were not joined by the Aequians till the year after, is positively stated by Livy[1018]: indeed the truce for thirty months cannot have expired before 333. It was not as formerly for plunder and conquest, but for their freedom, that the Volscians took the field with a numerous and well-disciplined army. The war had unquestionably been provoked by the Romans; yet the consul C. Sempronius Atratinus conducted it languidly and carelessly. The troops had no confidence either in him or in themselves. The first rank was beginning to give way; the standards were wavering: yet the consul gave no orders; and the cavalry could only stand by as inactive spectators of the approaching defeat of the infantry, when one of their officers, Sex. Tempanius, called on them to dismount and follow him. Their appearance gave the cohorts a stay. They themselves broke through the Volscian ranks: but when the latter closed again behind them, their little band was cut off, and taking its stand on a hill remained exposed to the attacks of a large force. In vain did the infantry exert its utmost efforts to relieve them: the battle lasted till nightfall without being decided. Both armies considered it as lost; both are said to have abandoned their camps. The division of the Volscians which surrounded the cavalry on the hill, also drew off at midnight. Hereupon Sex. Tempanius and his band proceeded to the Roman camp, but only found some wounded there, who had been left

1018 I do not lay any stress on Livy's only mentioning the Volscians in IV. 37, foll.; but I do on the express distinction he makes between the two at the close of IV. 42, where he says that the Aequians did not take up arms till the next year: we must remember too that their truce did not end before. It might seem indeed as if C. Sempronius must have been defeated by the Aequians; since he returned by the Via Lavicana (Livy, IV. 41): but Tempanius, who took the strait road, had seen nothing of him; so that the consul had made a cross march.

behind; nor could any one tell what road the consul and his army had followed. When they came in sight of Rome they were taken for Volscian cavalry. The whole army was believed to be lost; and no one doubted the destruction of the knights. The general joy at their safety, the gratitude for the preservation of the wounded whom they brought with them, were not greater than the indignation felt against the consul, who was dejectedly bringing back the remains of the infantry by another road. The decuries of knights whom, as it seemed, he had given up to destruction, and whom only a miracle had saved, were plebeians[1019]: this must be treachery, was the cry. Sex. Tempanius pleaded in his behalf. He and three other officers of his body of knights were elected tribunes of the people the next year[20]. In this office, with the piety of Roman soldiers, they protected their old general by their entreaties when he was impeacht by one of their collegues before the people. But two years afterward the offensive violence of his temper revived the remembrance of the fault that had been pardoned; and he was condemned to a fine.

Lavici, which is named among the conquests of Coriolanus[21], though perhaps erroneously, may probably have been one of the places which threw themselves into the hands of the Aequians on the dissolution of the Latin state: at all events it is clear that in 336, when the flourishing days of the Aequians had gone by, it was independent. The Lavicans however joined them in laying siege to Tusculum, which applied to Rome for succour, and not in vain. War was declared against them the

1019 It is a matter of course that the plebeian knights were drawn up apart from the patricians; and knights, whose leaders were all plebeians, must needs have been of the same order.

20 Among these there is an Icilius: so that the Icilii, whose name Livy regards as almost equivalent to rioters and incendiaries, were one of the plebeian equestrian houses.

21 See note 198, and p. 237.

next year. A battle was fought on mount Algidus, which was now for the last time the theatre of war with the Aequians: and this people and their allies gained a victory, which is attributed to discord between the consular tribunes at the head of the Romans, perhaps only on the uniform assumption that no Roman army could be beaten except through the fault of its generals. The Roman army fell back on Tusculum: but Q. Servilius, the conqueror of Fidenae, was created dictator: and, when the vanquisht troops had been joined by the reserve, the conquerors sustained a far severer defeat. Lavici, into which the Aequians had thrown themselves along with its citizens, was taken by storm, and, being parceled out among Roman citizens, is no more heard of in history[1022].

Three years after, in 340, Bolae was taken. On the dissolution of the Latin state it had received an Aequian colony, and had completely become an Aequian town[23]: hence the possession of it was the more obstinately contested. After it had been alternately taken and lost, it remained in the hands of the Romans. Its last capture led to a crime, which stands alone in Roman history down to the time of Sylla, the murder of the military tribune M. Postumius[24].

From this time forward the power of the Aequians and Volscians is visibly on the decline. As yet the Roman wars had seldom toucht their land, and even now reacht only to its border: but at this very period the Samnites were extending their conquests beyond all limits, and were everywhere subduing or dislodging the remaining Ausonian tribes. They had been settled for forty years at

[1022] With the exception of a single casual allusion. Cicero pro Planc. 9 (23), mentions the district as no less desolate than that of Gabii.

[23] According to the account of the war of Coriolanus it was utterly laid waste: Dionysius, VIII. 18: at this time they were an Aequian state: *Bolani suae gentis populus:* Livy, IV. 49.

[24] See p. 436.

Capua, and were also pressing forward on the upper Vulturnus and toward the Liris; where, though at a later period indeed, we find Casinum, Sora, and Fregellae, among their conquests. Hence the Volscians and Aequians could only employ a portion of their forces in defending the territory they had formerly won. In 342 Ferentinum was again wrested from the former, and restored to the Hernicans: the citadel of Carventum, which had once been one of the thirty towns, and had been reduced by the Aequians, as well as the fortress of Verrugo upon mount Algidus, on the confines of the Volscians and Aequians, were alternately taken and lost. Livy's statement that the Romans even in these days pusht forward as far as the Fucine lake sounds scarcely credible[1025]. The spreading of their conquests induced the Antiates to join their enemies; among whom they appear in 347; but never again after the campaign of 349, which was a glorious one for Rome. It is the first campaign in Roman history in which we see separate armies moving in concert, instead of the tedious uniformity of marauding inroads, ending with a battle. Three Roman legions entered the Volscian territory; one of the tribunes threatened Antium, a second Ecetra: the main body marcht against Anxur, which was abandoned to itself: this was the name borne by the Tyrrhenian town of Tarracina, since it had been taken by the Volscians[26]. It had the strength of a mountain fortress, and lay at the edge of the marshes. But in the towns to the south of the Tiber, built on the summit of steep rocks which could neither be battered nor undermined, a besieging army

[1025] Livy, IV. 57.

[26] The notion of the ancients, that Tarracina was originally called τραχεινά, is extremely plausible, if taken to mean that *Tarracina* in the Siculian language was equivalent to the Greek adjective. It can hardly have been from its Volscian name that *Jupiter Anxurus* was so called: that of the god was transferred to the town which contained his sanctuary.

generally discovered places within reach of scaling ladders; and when the top was once gained, the place lay open without walls or battlements. In this way Anxur was taken, while the Romans divided their attack, to distract the attention of the besieged. This conquest restored the old boundary of the dominion of the kings over Latium on the coast: but in the interior many places, which in their time had undoubtedly been subject to Rome, still maintained their independence; such as Antium and Ecetra, which after the campaign of 349 certainly resumed their municipal relation to Rome. On the other hand Velitrae, to which Rome sent a colony in 351[1027], must have submitted: and as this fact was past over by Livy, he may also have omitted to mention other places, which at this time acknowledged the soverainty of Rome; and among the rest Satricum[28].

[1027] Diodorus, XIV. 34.

[28] It revolted along with Velitrae in 361: Diodorus, XIV. 102.

THE LAST WAR WITH VEII.

No truce, even though it was for a long series of years, could remove the causes of war, like a treaty of peace and alliance. When that concluded with Veii after the taking of Fidenae had expired[1029], the Romans demanded satisfaction for the crime of Tolumnius[30]. The Veientines were afraid of war. Even seventy years before, it was only after they had collected succours from the whole of Etruria, and so long as these remained with them, that they carried it on with success, at a time when the confederates of Rome had to exert all their strength in their own defense. At present, though many of these confederate towns had been destroyed or alienated from Rome, the cohorts of the rest were bound to accompany the legions, whenever the senate commanded them to do so: while in more than one congress at the temple of Voltumna the Etruscans refused to send any aid. They cannot have failed to perceive that the town they were thus abandoning to its fate was the bulwark of their whole nation: and though unfortunately in the history of ill-cemented confederacies there never was, nor ever will be, a lack of examples where one of them, on the preservation of which the prosperity of all the rest depends, is abandoned to destruction by their envy and

[1029] Tempus induciarum exierat: Livy, IV. 58: see Vol. I. p. 283.

[30] Hence the answer, whether real or fictitious: *daturos quod Tolumnius dedisset.*

jealousy, at all events the election of a king at Veii cannot possibly have excited any senseless ill-humour among the other Etruscans[1031]. For Tolumnius also had been king: indeed we have no ground whatever to suppose that any city of the whole nation ever had a chief magistrate of any other kind. It is evident that there was some unavoidable necessity which constrained the Etruscans to rely on the hope that Veii could not be overpowered. Immediately before its fall, it is said that the cause why the cities south of the Apennines did not send any succours, was the vicinity of their new and formidable neighbours, the Gauls[32]. Melpum, the chief city of the Etruscans to the north of the Po, was taken by the barbarians at this very time: and though this event, which irrevocably decided the destruction of the Etruscan nation in those parts, may with good reason be regarded as the epoch of the descent of the Gauls into Italy[33], still the advance of the Celts upon the Alpine tribes, their approach to the passes of the mountains, the arrival of the fugitives whom they drove from their homes, may before this have engaged the attention of all the Etruscans, even those south of the Apennines, and have led them to deceive themselves in public concerning the issue of the Roman expedition; while in secret they said to themselves that even in the worst case the existence of the states more remote from Rome was not at stake, as it was in the conflict with those terrible barbarians.

The Veientines, whose number was probably very limited, ruled over a population of subjects and serfs, and hence were, and felt themselves, unable to face the Romans in the field. The statement that, after the Gallic invasion, four tribes were formed of the persons who had come over from the Veientines, Capenates, and

[1031] Livy, v. 1.

[32] Livy, v. 17: Gentem invisitatam, novos accolas Gallos esse

[33] See the text to note 1247.

Faliscans, during the wars with those states, must refer to the inhabitants of whole districts who had placed themselves under the soverainty of Rome[1034]. The individual deserters cannot have been sufficiently numerous: nor would they have been raised to the honour of having an equal share in the soverainty with what was then a fifth part of the Roman nation. It was the old Siculian population, which had been subjugated by the Etruscans and the Aequians, and which revolted from those three towns, looking upon the Romans as a nation of kinsmen and deliverers. The traces of the walls of Veii are said to confirm the statement of Dionysius, which indeed is credible enough in itself, that they were above four miles in circuit: and we can easily understand how the Etruscans might be led to found so large and strong a city in the neighbourhood of Rome, with a view to make war upon Latium, or to rule over it. But the population may perhaps have fallen as far short of its size, as that of Megalopolis did: the Veientines may have been as thinly scattered over it, as the Spartans were over their capital, though as soldiers very unlike them. If this was so, there is no difficulty in comprehending why a city in such a condition did not now make any attempt to resist the Romans in the field. On the other hand there would be an extreme improbability that it should have sent an arrogant and insulting answer to their demands, even if we did not find a statement that it had prayed for forbearance the year before.

Still, though the whole territory of Veii lay open to the Romans as far as the walls, these defied the rude assaults of a levy that only came into the field for a few days, with as much provision as each soldier could carry from home with him[35]: and when that army was disbanded,

[1034] Qui Veientum Capenatumque ac Faliscorum per ea bella transfugerant: Livy, IV. 4: compare c. 5.

[35] Οἰκόσιτοι: Zonaras, VII. 20.

even these Etruscans, by a sudden inroad, such as they had made in the preceding wars, might inflict severe retaliation on the Roman territory in their neighbourhood. Without a force held in readiness to prevent such inroads, a Veientine war was attended with great risk to the welfare of the Roman husbandman, and the objections urged by the tribunes were well grounded[1036]: on the other hand if such a force could be kept under arms, until famine and distress should force Veii to surrender, this conquest would be the beginning of a second youth to the republic. The only way of doing this was to revive the practice of giving the troops pay, as the tribunes had demanded eighteen years before: and for this end, unless the plebeians were to have a serpent held out to them instead of a fish, it was necessary that the tithe on the domain-lands should be honestly paid. I think I have more than made amends for a number of heavy charges against the shortsighted and unprincipled selfishness of the senate, by shewing that as early as this it already knew so well how to govern, that, to render the conquest of Veii practicable, it acceded to a reform of the constitution, and to the establishment of pay, a measure leading inevitably to the abolition of that exemption from taxes which the patricians had usurpt[37]. It is possible that many, whose votes went to make up the majority, were induced to give them up by the hope that their own order would in the end reap the whole benefit of the conquest, and that means would again be found to quash all the rights conceded to the plebeians. But the persons who brought in the resolution must have been moved by better sentiments. Accordingly pay was decreed in the year 349. The patrician contributions amounted to considerable sums, so that a property-tax was merely wanted to make up the deficiency; and the declaration

[1036] Livy, IV. 58. [37] Above, p. 438.

of war, which had previously been rejected, was past in the following year[1038].

These ordinances, though, so far as shameless selfishness could exert any influence, the execution of them was checkt, effected their purpose. A Roman force was kept on foot, strong enough to make the Veientines suffer all the miseries of war, and to disable them from retaliating. The story indeed that the city was invested for ten whole years, winter and summer without intermission[39], belongs to the poetical tale. Had the blockade been complete, even supposing that there were large cornfields in the wide space within the walls, before a year's end a famine would have been raging, no less intolerable than that which compelled Athens to surrender to Lysander. But not a word is said of any scarcity: and if we reflect that two legions were totally inadequate to the blockade of so large a city, and nevertheless that their pay for the whole year, without reckoning any of the other expenses of the war, would have required ten millions of ases[40], which at that period may safely be estimated as equal to a million of Attic drachms, we shall see reason to conclude that the supplies can never have been cut off completely for any length of time. During the main part of the term that the war lasted, the Romans, we must suppose, merely built forts, like that on the Cremera,

[1038] Livy, IV. 60, where the connexion between the ordinances is perfectly clear.

[39] Livy, V. 22: Decem aestates hiemesque circumsessa. Ἔτει δεκάτῳ τῆς πολιορκίας. Plutarch, Camill. c. 7. Ἔτη θ'. Dion, Exc. 13. p. 13.

[40] More exactly 10080000. The reader will remember that the cohorts at this time were reckoned at 600 men each; so that a legion contained 3000: every soldier received 1200 ases a year: the private footsoldiers therefore in two legions would have 7200000. To this must be added the double pay for 300 centurions, 720000; and the triple for 600 knights, 2160000.

in the territory of Veii, which were sufficiently strong to resist any sudden assault, and, in case of a more serious attack, might be relieved by a general levy. Such castles, as they were called in the military language of the Romans, made the cultivation of the fields almost impossible, and the passage of supplies very difficult.

Like Decelea, they were constructed under the protection of the army, and perhaps in the very first campaign, that of 350. In other respects this and the next seem to have past away like the earlier ones of the Peloponnesians in Attica: the Roman army, which was so superior to the Veientines as to drive them out of the field, ravaged their country, but retired at the end of a few weeks. None of the neighbouring states took their part in their distress: hence in the third campaign, in 352, the siege of their city was begun. A mound was raised against the wall, cased with boards to keep the earth from slipping: even in Greece at this period the usual mode of attacking a town was still to erect a terrace over against the walls, of the same highth, or higher, and of great breadth, in order to assail the besieged from the same or a superior level[1041]. The gallery under the shelter of which the battering-rams were to play upon the walls, had been almost carried up to them: these engines, though of vast antiquity, and employed by the Egyptian conquerors, were rare and weak, as we see by the two which the Peloponnesians had at the siege of Plataea[42]. When the works were advanced thus far, the senate resolved to prolong the campaign through the winter, till the place should be reduced: but this project was baffled by a sally, in which the besiegers were routed, the gallery and engines burnt to ashes, and the mound

[1041] Thucydides, II. 75-77.

[42] Projectile engines were not yet in use: it was only about this time that catapults were invented at Syracuse, the cradle of the mechanical arts.

leveled. Henceforward no attempt to renew the siege was made till the last campaign.

This unexpected change of fortune encouraged the Capenates, who were a Veientine colony, and the Faliscans, to acknowledge to themselves that their own existence depended on the preservation of Veii, and to hope that they might be able to save it. On the other hand the Romans, who had before felt weary of their extraordinary sacrifices, now became eager to do their utmost. Knights, to whom no horses could be assigned, offered to serve with their own: equal zeal was displayed by the classes: and the next campaign, that of 353, was opened with forces, which, under able generals, might have foiled the hopes of the allies. But the Roman commanders forgot everything except their jealousy of each other. Two camps were pitcht before Veii, a larger one under the tribune L. Virginius[1043], a smaller under his collegue, M. Sergius. The latter was attackt by the troops of the allies and by a sally from the town at the same moment: and he chose to let them overpower him by numbers, rather than give his enemy an opportunity of gaining a victory, in which he himself would only have been spoken of as having been rescued from danger. With still more culpable perverseness, Virginius remained motionless, because he received no application for aid. Thus the other camp was carried: and the larger one must also have been evacuated: for it is not till the next year, 354, that we hear that the position before the city was reoccupied, and the works restored. Including the legion of veterans, which perhaps was the only one employed in repairing the entrenchments, so large a force was now brought into the field, that Camillus, in this campaign, the first in which his great name appears, and another

[1043] The legions of the juniors were always distributed equally: so that, when one army was stronger than the other, it must have had a legion of veterans or a body of auxiliaries attacht to it.

tribune, requited the Capenates and Faliscans, by ravaging their territories up to the very walls of their cities. Two years after, in 356, when the Romans were again occupying a double camp before Veii, the two allied states repeated the attempt which had before been successful, in a similar manner, but with a directly opposite result: for while they were attacking the smaller camp, the larger army surrounded them. The Veientines, who made a sally from the town, were still more unfortunate. A great number of them were killed before the gates, which were closed against them prematurely, through fear of the Romans at their heels. This was the first victory gained by plebeian military tribunes. The next year past away without any action before Veii. On the other hand Capena and the Faliscans were visited with fresh ravages. After this, in 358, the Tarquinians attempted to relieve the distress of the Veientines by an incursion into the Roman territory: but they did not come off with impunity.

The campaign of the year 359, in which Veii fell, began unpropitiously. Two of the military tribunes had made a fresh inroad into the territory of the Capenates and the Faliscans. They incautiously ventured into a difficult country. Genucius expiated his fault by dying bravely at the head of his troops; Titinius broke through the army that surrounded him. Such an alarm was spread, that, if the conquerors had advanced immediately to attack the lines before Veii, they might have destroyed them. At Rome it was expected that the Etruscans would again be seen on the Janiculus. In the hope of putting an end to the war, it was resolved to exert the utmost efforts; and the command was entrusted to Camillus, who was made dictator. He assembled the whole military force of Rome, along with Latin and Hernican auxiliaries, and led them first against the allies of the Veientines. At Nepete he fell in with the Capenates

and Faliscans[1044], and gave them a decisive defeat. After this he increast the number of the forts before Veii, and invested the city more closely than ever.

Thus far we have the simple narrative of the war, as it was given by the Annals. Their account of the capture of the city has been entirely supplanted by a poetical story, belonging to the lay or legend, whichever one may choose to call it, of Camillus; an epic narrative, the features of which are irreconcilable with history, and which extends from this period down to the last victory over the Gauls by the Alban mount, forming a whole still preserved, at least in substance, under a biographical form in Plutarch. In this legend Veii is the Roman Ilion: from it came the story that the siege lasted ten years: it is by the same legend that the destiny of the city is connected with the prodigy of the Alban lake; that the gods themselves are represented as interfering to decide it; and that the fate of the victorious general and the conquering people are made to result, as an expiation for their excessive prosperity, from the fall of Veii. Henceforth we are no longer standing on historical ground: I shall relate this poem like the rest, restoring its original substance.

A number of portents, among others an unexampled swelling of the Alban lake, had terrified the Romans. In the midst of the dogdays[45], without any fall of rain, or anything unseasonable in the weather, the water rose to such a highth as to overflow the mountain which inclosed it, and deluge the neighbouring country[46].

[1044] This renders it improbable that Capena should have stood in the situation generally assigned to it, which is nearer to Rome.

[45] Dionysius, Exc. Mai 8. p. 8. Τὸ θέρος ἔληγεν· Plutarch, Camill. c. 3.

[46] Dionysius, Exc. Mai 8. p. 9. Plutarch, Camill. c. 3. Zonaras, VII. 20. Cicero's words, *dum lacus redundarat*, De Divin. I. 44 (100), say the same thing. I notice this, because Livy has merely, *in altitudinem insolitam crevit*: V. 15.

At any other time the senate would have consulted the Etruscan aruspexes on the import of this prodigy: but as it was, there was ground to expect a deceitful answer. A solemn embassy was therefore sent to inquire of the Pythian oracle.

It was a time of truce round the walls of Veii; and many, who from living so near had known each other before the war, would often fall into discourse. In this manner the inhabitants heard of the prodigy of the lake: and a soothsayer was impelled by destiny to scoff at the efforts of the Romans, the futility of which was foretold in the prophetic books. Some days after, a Roman centurion invited the soothsayer to come into the plain between the walls and the Roman trenches, to hear an account of a portent that had fallen out in his house, and to teach him in what way to appease the gods: the aruspex was seduced by the reward promist him, and incautiously let himself be led near the Roman lines. On a sudden the stout centurion seized the old man, and dragged him, an easy prey, into the camp. From hence he was carried to Rome before the senate; where he was forced by threats to speak the truth, and, loudly bewailing the destiny that had infatuated him to betray the secret of his nation, confest that the Veientine books of fate announced, that, so long as the lake kept on overflowing, Veii could not be taken, and that, if the waters were to reach the sea, Rome would perish[1047]. Not long afterward the embassadors returned from Delphi, and brought an answer to a like effect[48], whereupon the

[1047] Such is the statement of these *fata* given by Cicero, De Divin. I. 44 (100): that in Livy, Plutarch, and Dionysius, is much less forcible.

[48] The oracle ought to correspond more exactly with the prediction of the *libri fatales*, as given by Cicero, than it does in Dionysius, Exc. Mai 12. p. 11, and in Plutarch, Camill. c. 4.: for Veii it mattered not whether the water reacht the sea, provided it kept on overflowing; not so for Rome. The words, *cave lacu contineri*, in

tunnel was begun, in order that the lake might cease to overflow, and that the water drawn from it might be spread through the fields in ditches. This work was carried on unremittingly: and the Veientines learnt that the fatal consummation on which their ruin hung, was at hand. They sent an embassy to implore forbearance; but they found no compassion. The chief of the envoys, before they quitted the senate-house with the unrelenting answer, warned the Romans once more of the penalty that would inevitably await them: for, as certainly as Veii was now doomed to fall, so surely did the same oracles foretell, that, soon after the fall of Veii, Rome would be taken by the Gauls[1049]. Nobody listened to him.

Camillus was already commanding as dictator before the city, and was unsuspectedly executing the work which opened the way for its destruction. The Romans seemed to be standing quietly at their posts, as if they were awaiting the slow issue of a blockade which could not be forced. But the army was divided into six bands; and these, relieving one another every six hours, were labouring incessantly in digging a mine, which was to lead into the citadel of Veii, and there was to open into the temple of Juno.

Before the assault was made, the dictator inquired of the senate, what was to be done with the spoil. Appius Claudius, the grandson of the decemvir advised selling

Livy v. 16, are at variance with the unquestionable import of the prediction; for it was the overflow that protected Veii. The oracle seems to have been altered in this place: in other parts several of the verses, in which it was exprest by the legend, may be recognized: Emíssam 'per ágros rigábis—dissipátamque rívis extíngues,—Tum insíste audax hóstium múris,—memór quam pér tot annos óbsides úrbem,—éx ea tibi hís quae nunc pánduntur fátis victóriám datam—Belló perfectó donum amplúm victor ád mea témpla portáto.

1049 Dionysius, Exc. 12. p. 12, and Cicero, de Divin. I. 44: who, where he says that the secrets of the books of fate were betrayed by a deserter, is so far following a more prosaic narrative.

it for the benefit of the treasury, that it might supply pay for the army without need of a property-tax. This was opposed by P. Licinius, the most eminent among the plebeian military tribunes: he even declared it would be unfair if none but the soldiers then on the spot were to have a share in the booty, for which every citizen had made some sacrifice or other. Notice, he said, ought to be given, for all who wisht to partake in it to proceed to the camp[1050]. This was decreed; and old and young flockt toward the devoted city. Hereupon, as soon as the water was disperst over the field, and the passage into the citadel finisht, Camillus made a vow to celebrate great festive games, and to dedicate a temple to Matuta, a goddess highly revered on the adjacent Tyrrhenian coast[51], and addrest prayers to Juno whose temple covered the way destined to lead the Romans into the city, with promises that she should receive higher honours than ever. Nor were his adjurations fruitless. To the Pythian Apollo, whose oracle, when it encouraged the Romans to put faith in the words of the aruspex, demanded an offering for Delphi, he vowed a tenth of the spoil. Then, at the appointed hour, the passage was filled with cohorts: Camillus himself led the way[52]. Meanwhile the horns blew the signal for the assault[53];

[1050] The remark in Livy, v. 20, that on such occasions the nimble plunderer and not the good soldier fares the best, is groundless, unless we suppose that at this sackage the ancient regulation described by Polybius (x. 16) for the giving up and equal division of the spoil was not observed. Even the erarian who had paid the tax was to have a share, though he had not served; and so was every plebeian, without regard to the question, whether he was a *locuples* and had paid much or little, or whether he was a proletarian and had paid nothing.

[51] On the temple of Matuta at Pyrgi, see Wesseling on Diodorus, xv. 14.

[52] Such must have been the account in the legend, since Camillus offers the flesh of the victim on the altar: he must have been one of the first who rose from underground.

[53] See Scaliger on Festus, Aeneatores.

and the countless host brought scaling-ladders, as if they meant to mount the walls from every side. Here the citizens stood expecting the enemy, while their king was sacrificing in the temple of Juno. The aruspex, when he saw the victim, declared that whoever brought the goddess her share of the slaughtered animal would conquer. This was heard by the Romans underground. They burst forth, and seized the flesh; and Camillus offered it up. From the citadel they rusht irresistibly through the city, and opened the nearest gates to the assailants.

The incredible amount of the spoil even surpast the expectations of the conquerors. The whole was given to the army, except the captives who had been spared in the massacre, before the unarmed had their lives granted to them, and who were sold on the account of the state. All objects of human property had already been removed from the empty walls: the ornaments and statues of the gods alone were yet untoucht. Juno had accepted the vow of a temple on the Aventine. But every one trembled to touch her image: for according to the Etruscan religion, none but a priest of a certain house might do so without fear of death. A body of chosen knights who took courage to venture upon removing it from its place, proceeded to the temple in white robes, and askt the goddess whether she consented to go to Rome. They heard her voice pronounce her assent; and the statue of its own accord followed those who were leading it forth[1054].

While Camillus was looking down from this temple on the magnificence of the captured city, the immense wealth of which the spoilers were amassing, he called to

[1054] Plutarch, Camill. c. 6, expressly charges Livy with weakening the old tale, by making one of the Romans ask the question in jest, and others believe they saw a nod of assent. Dionysius, Exc. 17. p. 18, says that the goddess repeated her words twice over,—as in the legend of *Fortuna muliebris:* VIII. 56.

mind the threats of the Veientines, and that the gods were wont to regard excessive prosperity with displeasure; and he prayed to the mighty queen of heaven to let the calamity that was to expiate it be such as the republic and he himself could support[1055]. When after ending his prayer he turned round to the right, with his head veiled according to custom[56], his foot stumbled, and he fell. It seemed as if the goddess had graciously appeased destiny with this mishap: and Camillus, forgetting the foreboding which had warned him, provoked the angry powers by the unexampled pomp and pride of his triumph. Jupiter and Sol saw him drive up with their own team of white horses to the Capitol. For this arrogance he atoned by a sentence of condemnation, Rome by her destruction.

Thus far the poetical tradition is a whole; and, though it relates an event which undoubtedly occurred, free scope has been given to the imagination in it.

On the rising of the Alban lake, and the discharge of its waters, I shall speak lower down from a historical point of view, and shall point out that, since the epoch assigned to that event is unquestionably correct, it is quite impossible that the tunnel should have been completed before the capture of Veii; even if we disdain to insist on Livy's statement, which represents the work as not having been begun till after the return of the envoys from Delphi, and places this in the year before the

[1055] Making Camillus utter the prayer in the temple of Juno is an addition of my own, but unquestionably in the spirit of the legend.

[56] The cell was open toward the east; and the face of the statue turned toward the same quarter: in front of the cell stood the altar in the open air. A person in sacrificing stood between the altar and the sanctuary, and when offering up his prayer lookt likewise toward the east: but he also turned round toward the image to do it reverence, though with his head veiled, that he might not behold it, now that the deity had been called down into the sanctuary.

city was taken[1057]. It seems to be quite certain that then, as during the conflict with the Samnites, the Pythian god was askt how the war might be brought to a close: and without being chargeable with a shallow attempt to explain away difficulties, we may suppose, indeed we can hardly doubt, that the answer, which is totally unlike those of the Pythian priestess, and which distinctly enjoins the undertaking an extremely difficult and expensive work, such as the impoverisht nation must have been strongly averse to, was either procured or fabricated and publisht by the senate. Should any one reject this supposition, from a wish to maintain the credit of every Delphic oracle, however it may have been handed down, yet surely we shall scarcely find anybody with such a stock of heathen faith, as seriously to imagine it conceivable that the answer of the oracle should have coincided with the words of an Etruscan soothsayer.

That Veii was taken by means of a mine, seems to have been never questioned hitherto; Livy having got rid of the incident in which, as by a miracle in a tragedy, the sacrifice begun by the Etruscan prince is completed by the dictator. The rising of the Roman soldiers, like that of a ghost on the stage, out of the ground, has not excited any scruples: and its taking place in the temple of Juno has undoubtedly been regarded as an accidental circumstance. But in the legend this is the keystone of the whole story. As Veii was to be besieged for ten years, like Ilion; as the passage filled with armed men answers to the horse of Epeus, which was led up to Pergama; so does Juno bring destruction on both cities. The vow of Camillus did not first gain her over. The way by which the armed men were to issue forth in her temple, and to consummate the sacrifice on which the fate of Veii finally depended, had already been committed to her protection. Juno

[1057] Livy, v. 16 and 19.

was the peculiar Argive deity of the Italian as well as of the Greek Pelasgians. Her temple on Lacinium was a bond of union to the Oenotrian states[1058]: that in the land of the Picentines was ascribed to the Argonauts[59]: at Falerii was one which had subsisted with its sacred rites ever since the time of the Siculians[60]. As the Aequian conquerors had retained her worship at Falerii, the Etruscans had done the same at Veii. The goddess however was not reconciled to the foreiners: she desired to dwell on the Aventine with the Latin plebeians, the offspring of her ancient Tyrrhenians. This was the poet's meaning: and thus Juno, the angry goddess of the Iliad, causes the prodigy of the Alban lake: for until this was drawn off, destiny, according to the Etruscan religion, did not permit Veii to fall. She too infatuated the aruspex to betray the secret. To suppose that the main point here, the opening of the passage into her temple, was a piece of chance, is decidedly illogical.

It is another question, whether, after giving up this circumstance, we may not still have historical ground for believing that Veii was taken by means of a passage out of which armed men mounted within the walls. Diodorus speaks of such a mine, without any further details[61]; and no mention is to be found of any other mode of taking the town. Now I will admit that the tufa of this district may easily be workt, and yet is so firm as not to need carpentry; which would only be required where the passage was to be carried under the walls: and these might be supported upon posts and beams, as they would have been if undermined for the purpose of letting them fall in: such a mine might still leave room for a passage.

[1058] Vol. I. p. 85. [59] Vol. I. p. 45.

[60] Dionysius, I. 21: compare Eckhel, doctr. num. I. p. 92.

[61] Diodorus, XIV. 93. Βοιοὺς ἐξεπολιόρκησαν, διώρυχα κατασκευάσαντες.

If there were any large open places within the city, it was possible that the passage might hit upon them, and that the troops might rush out during the night without being seen. This however depended on fortune; and no human dexterity could ascertain the right direction, even supposing that the distance was not great[1062]. One may also conceive a mode of accounting for the statement, that a sixth part of the army was employed in this service; though it is clear that very few could work together in lengthening the passage at the same time. Many might be engaged in widening it; and a great number placed in file, might convey the stones from hand to hand as they were hewn out. But their proper destination would be to protect the work, in case it was discovered by the besieged, and to try to seize the opportunity of bursting into the city. It is manifestly however most improbable that the besiegers should needlessly have burthened themselves with a hard and tedious labour, when by merely firing the timbers, by which the walls must at all events have been propt up, they might have made a breach: the Romans assuredly were not afraid of mounting one. Such mines were very usual in sieges: whereas in the whole history of ancient military operations we shall scarcely find an authentic instance of a town taken in the manner related of Veii[63]. I should be inclined therefore to conjecture that the legend arose

[1062] Zonaras, VII. 21: *Πόρρωθεν ἀρξάμενος.*

[63] The capture of Fidenae by A. Servilius (Livy, IV. 22) is not a whit better attested than that of Veii: the only other instance, so far as I know, is that of Chalcedon by Darius, in Polyaenus, VII. 11. 5. Now this seems to have been derived from no source but Ctesias, who had related the burning of that city by Darius, after his return from his Scythian expedition: see Photius, p. 38. b. ed. Bek. Any story relating to this period, even if told by a far more scrupulous witness, must be extremely doubtful: how few of the particulars with regard to the expedition of Xerxes can be regarded as historical! Herodotus knows nothing about that siege of Chalcedon: he tells us indeed that Otanes took Chalcedon, together with other towns in those

out of a tradition that Veii was taken by means of a mine, by which a part of the wall was overthrown. Perhaps this was the first time such a thing was ever tried in the Roman wars: for in Latium, where the strength of the towns arose from the steep rocks they were built on, there was no opportunity for mining.

The story that Camillus celebrated his triumph with a proud magnificence never witnest before or after, may perhaps also belong wholly to the poem, and may originally have been framed to enhance his glory. The discrepancies and difficulties in the account of the offering to the Delphic temple probably had no other source than the Annals.

The dictator had vowed a tenth of the spoil to the Pythian Apollo. The pontiffs declared that the republic was only answerable for such money as had been received by the questors, and for the value of the buildings and of the ground of which the people of Veii had been masters before the capture; and that every one who had taken any part of the spoil, must pay for it according to its value; if he did not do so conscientiously, the sin would lie with him, not with the city[1064]. This obligation was not divulged till the gains of the bloody day had been spent by most, while the provident husbands had laid out theirs. The terrours of conscience however extorted a compensation, which was felt as no less a burthen than a tax: and every one was full of resentment against the general, whose undissembled illwill toward the people made his silence look like intentional malice; since he might have given them notice beforehand to lay by the consecrated share.

parts: v. 26: but this was at a later period, and under circumstances very different from those related by Ctesias.

[1064] I have inverted the common story, in which it sounds no less strange that the dictator should have forgotten his vow, than that the senate should not have thought in the first instance of the obligation of the state.

It was resolved to make a golden bowl equal in value to this tenth. Now, supposing that the sum which the treasury had to pay was not in hand, and that it would have been requisite to levy a property-tax for the purpose, it was an extremely meritorious act in the women to give up their ornaments and jewels: of course they were to be repaid when the gods should again bless the arms of the republic. They were rewarded by the senate with the privilege of going in chariots through the city[1065], which men enjoyed only during the term of their curule offices. A trireme with three envoys on board was sent to deliver the consecrated offering; but it was taken by some Liparaean ships of war, and carried to their island. The Romans call them pirates; but there is much more likelihood in the account that the Roman galley was captured because it was supposed to be a corsair[66]. For the Liparaeans kept cruisers out against the Tyrrhenian pirates, and dedicated many offerings at Delphi out of the booty they took from them[67]: and though the Romans are far removed from all imputation of having ever been guilty of piracy, still it might very naturally

1065 If the money had been in the treasury, as Livy expressly affirms, (*pecunia ex aerario prompta—ut* (*tr. mil.*) *aurum ex ea coemerent:* v. 25), all that would have been necessary at the utmost would have been to wait a little, and to pay rather dear for the gold: that gold was to be had is proved by the discoveries at Canino. The matrons would needlessly have sacrificed the price of the labour expended on their jewels: or else the reward would have been bestowed upon them for nothing but going without their ornaments for a time. It must be assumed therefore that the state was obliged to remain their debtor for the amount of its share. Lending to the republic was much more meritorious during the distress caused by the Gallic invasion, than at this period of prosperity: hence Livy is certainly right in referring the greater honour of the funeral eulogies to the former (VI. 4), the inferior one mentioned in the text to the latter: and Plutarch, Camill. c. 8, and Diodorus, XIV. 116, who state the reverse, must be mistaken. The latter on this point is following different authors from Fabius: λέγουσι δέ τινες.

66 Plutarch, Camill. c. 8.

67 Strabo, VI. p. 275. c.

be suspected that a ship running out from their coasts was bent on ill, and used the sacred voyage as a mere plea to get off, or at least would not be withheld from depredations should an opportunity present itself. Only two years later the piracies of the Tyrrhenians gave Dionysius a pretext for an expedition against the Caerites[1068], though they were as blameless on this head as the Romans themselves. A Tyrrhenian corsair, Postumius, whose name betrays him to have been a Latin, was seized and put to death by Timoleon[69]. Even in the middle of the fifth century the towns on this coast, though subject to the dominion of Rome, were still committing similar outrages against the Greeks[70]. But the Liparaean chief magistrate, Timasitheus, abhorred the thought of retaliating on the innocent and on a temple: he releast the trireme, and had it escorted to its destination. The senate testified its gratitude by presents, and by granting him the privileges of a *πρόξενος*; and when Lipara fell under the power of the Romans in the first Punic war, his descendants were exempted from dependence and from taxation[71]. The bowl was deposited at Delphi in the treasury of the Massilians, but was not preserved there long: it was melted down by Onomarchus: the bronze stand however remained with the inscription, a memorial of the offering[72].

This memorial indeed does not prove so conclusively that the gold vessel weighed eight talents[73]; which must undoubtedly mean Italian talents, of a hundred pounds each: an enormous gift to a forein temple, toward which the Greek cities themselves, at least after the Peloponnesian war, never acted with anything like the same munificence.

1068 Diodorus, xv. 14.

69 Diodorus, xvi. 82.

70 Strabo, v. p. 232. b. The pirates seem to have been Antiates.

71 Diodorus, xiv. 93.

72 Diodorus, xiv. 93. Appian, Italic. fr. 8. 1.

73 Plutarch, Camill. c. 8.

The number however is not a historical one, but is the typical sum at which the tenth of an extraordinarily rich spoil, like that of Pometia and of the battle of Regillus, was valued. From the tenth of 120 talents, or 12000 pounds of silver, or 12000000 pounds of copper, the annalist subtracted the third due to the Hernicans: this the Romans could not dispose of: but they might of the third which would have belonged to the Latins, as these were now dependent on Rome[1074]. It would be a mere waste of time to inquire whether the value of the property contained within the walls of Veii can have amounted to the above-mentioned sum; not so however to question whether the whole tenth was dedicated to the Greek god; since the same spoils defrayed the charge of building the temple of Juno on the Aventine.

[1074] Vol. I. p. 513, note 1137.

THE OTHER WARS DOWN TO THAT WITH THE GAULS.

During the second campaign against Veii a town called Artena was taken by the Romans. According to some of the annalists, it belonged to the Volscians; according to others, to the Veientines. Livy adopted the former notion[1075]: yet were it not that we find mention of an engagement in the same year near Ferentinum, we could not hesitate on internal grounds to prefer the latter. It is natural that the whole force of the republic should have been pointed against Etruria: and so we might readily suppose that a town in that extensive country had been conquered by a division of the Roman army. Throughout the remainder of the Veientine war nothing is said about any hostilities against the Volscians and Aequians; excepting at Anxur, where the inhabitants, with the help of some of their countrymen who had got into the town, overpowered the Roman garrison in 353. The circumstances under which this was brought about, shew that Rome was at peace with the rest of the Volscian nation. A great part of the soldiers were absent on furlough, and Volscian merchants had been admitted without any precaution into the place[76]. Two years afterward it was retaken: and it seems that the peace with the rest of the nation was still subsisting undisturbed.

[1075] IV. 61. [76] Livy, V. 8.

The Romans were most deeply concerned to maintain it; and the disheartened Ausonian tribes were enjoying their repose with faint hopes of favorable events that might avert the impending danger.

Veii however, whose destruction they might perhaps have prevented, fell: and in the very next year, 360, the senate ordained an assignment of land to three thousand colonists in the territories wrested from those tribes in the last wars. According to all appearances, Vitellia, which is spoken of almost immediately after as a Roman colony in the land of the Aequians, without any mention of its establishment, and which was one of the Albian towns enumerated among the conquests of Coriolanus[1077], formed the centre of this settlement[78]. No less manifest is it that this made the Aequians take up arms the next year, 361; just as the same effect was produced a century after by the colony at Carseoli*; just as the Gauls were driven to the most desperate resolutions by the agrarian law of Flaminius†. So long as a country was in the hands of a few possessors, and cultivated by their slaves, there might be hopes of recovering it: but when a large number of free citizens settled upon it, ready to defend their property, then was it first felt to be lost for ever, unless the settlement were destroyed without delay. Nor could it be doubted that the purpose of such a colony was to pave the way for fresh conquests. Diodorus says that the fourth war against the Aequians began at this time[79].

[1077] See p. 260.

[78] Like Signia: see note 193.

* Livy, x. 1.

† Polybius, II. 21.

[79] XIV. 98. That he is speaking of the Aequians has been perceived by everybody: the corrupt name Αἰτωλοὺς is to be changed into Αἴκλους, the form used by this writer, not into Αἰκοὺς or Αἰκίκλους. By the first war, he seems to have meant the whole period prior to 310; by the second, that which broke out in 324, and for which preparations were making the year before (Livy, IV. 25, 26); by the third, that which began in 334 after the expiration of the truce: Livy, IV. 42.

They betrayed no want of energy in carrying it on, though they had been so slack to engage in it. In the first campaign the Romans lost Verrugo, a fortress, probably on Mount Algidus, which was a frequent object of contention, and is usually spoken of as belonging to the Volscians. The story that it was not taken by force, but was evacuated without any necessity[1080], does not deserve any more credit than the hacknied tale that the other Roman legion the next day made amends for its defeat by a victory, which, it is admitted, produced no results, owing to the abandonment of Verrugo in consequence of an unlucky mistake. On the contrary in the year after, 362, the advantage is still decidedly on the side of the Aequians. The colony which gave rise to the war is destroyed by the taking of Vitellia[81]; nay a statement, the validity of which cannot be questioned, states among the events of this year, that Velitrae and Satricum revolted. Such being the state of affairs, Circeii, which must no doubt have been reconquered before the year 349, was secured by a colony[82], in which the Latin towns assuredly also took a share, since we find it subsequently reckoned among them. The neighbouring states however did not keep the upper hand long. Under this and the next year two Aequian towns, the names of which have a very odd look[83], and are most probably

[1080] Diodorus, XIV. 98: Ἐκ δὲ Οὐεῤῥηγῖνος πόλεως ὑπὸ τῶν πολεμίων ἐξεβλήθησαν. Compare Livy, v. 28: who sees nothing disgraceful in the blind panic of the troops, and what he regards as their needless flight, but cannot bear to think that the Romans should ever have been overpowered by fortune or by numbers.

[81] Livy, v. 29. The invasion of the Gauls seems to have prevented its reestablishment: even without this, however, Vitellia could not occur in the list of the Latin colonies, since in reality it was only a *conciliabulum* in a settlement consisting exclusively of Romans. The fiction of Eulogius, who converted it into a Cremera of the Vitellii (Suetonius, Vitell. 1), is not deserving of the slightest consideration.

[82] Diodorus, XIV. 102. See p. 465.

[83] Λίφλον and Λιφοίκουα: Diodorus, XIV. 102. 106.

misspelt, are said to have been taken by the Romans: and with these events the war seems to cease, a year before the arrival of the Gauls.

In the year after the fall of Veii the conquerors wreakt their vengeance on the towns which had helpt to prolong the war. The people of Capena, in whose territory no crop and no building was spared, sued for peace in 360. Since that town is never again mentioned as an independent place, it might be deemed certain that they were reduced to a state of subjection, and that after the restoration of Rome they were incorporated in the four new tribes; unless we were compelled to admit the possibility of their having been swept away without leaving a trace behind them during the Gallic invasion, before the period when the later Roman wars shed some degree of light on Etruria. In the next year, 361, the territory of the Faliscans, which had already been laid waste, became the scene of more important undertakings. They had taken up a very strong position, a mile from Falerii, to cover the neighbouring country. Camillus without a battle forced them to retreat into the town. Had this war been protracted like that before Veii, while it was so much further from Rome, it would have exasperated the indignation of the commonalty at the scheme of the patricians to appropriate the territory won from the Veientines to themselves. The peace, even if it yielded no other advantages, was rendered agreeable to the people by the exaction of a year's pay from the enemy; whereby the taxpayers were relieved from the tribute, and the soldiers, without serving, received their full wages[1084].

Some incident in this war must no doubt have supplied a groundwork for the wellknown story, that a schoolmaster of Falerii treacherously conducted the boys of the

[1084] Livy, v. 27. According to the regular practice, whatever territory and captives had been taken in the war would also be retained.

noblest families into the Roman camp, and that Camillus sent them back, and ordered the scoundrel to be flogged. In the form however in which we are familiar with it, the annals beyond a question merely borrowed it from the legend of that hero, the character of which, wherever it comes into view, will always be found to be no less unhistorical than it is with regard to the Veientine war. If we do but bring ourselves to allow the possibility that this may be a poetical tale, we shall immediately see how inconceivable the facts are. Nor is the subsequent narrative, that the Faliscans, overcome by such generosity, surrendered to the Romans unconditionally, and gave up their arms and hostages, less fabulous[1085]. No people can ever have been guilty of such treason against itself: for that inconsiderate affection, which has sometimes thrown a nation into the hands of a tyrant, is quite another matter. The exaction of a year's pay for the troops was without doubt a fact related in the Annals: and there are many instances of such a condition imposed in treaties with a people which retains its independence: but I question whether it was ever demanded from one that resigned itself to a state of subjection. Of this pretended submission of Falerii not a trace is to be found afterward. On this point however an advocate of the story might reply, that the Faliscans would naturally come to their senses after their act of magnanimous precipitation, and that the approach of the Gauls gave them an opportunity to recover their freedom.

Immediately after the restoration of Rome, we find her in possession of the soverainty over Sutrium and Nepete, towns which lay between Veii and Vulsinii, and which long after formed the border-fortresses of her territory

[1085] Livy represents it as having surrendered according to the strictest forms: *Mittite qui arma, qui obsides, qui urbem patentibus portis accipiant:* so that they even ask for a garrison, which in antiquity, as during the thirty-years war, was of all scourges the most dreaded.

on the side of Etruria. On which of the chief cities they were previously dependent, it is impossible to make out. The conquest of Sutrium seems to have taken place in the year 361, under which Diodorus mentions an expedition against it[1086], after the conclusion of the peace with the Faliscans. The acquisition or the possession of that town may probably have been the cause of the war against Vulsinii, which was decided in the second campaign, in 364, by a great victory, when eight thousand Etruscans laid down their arms[87]. A peace was concluded for twenty years; and the vanquisht were charged with a year's pay for the Roman army. In this war the Salpinates were in alliance with Vulsinii: so that this people, whose territory cannot have been far off, must either have been one of the soverain Etrurian states, of which no other notice has been preserved, or a tribe of some different race that retained its independence in this neighbourhood[88].

This was on every side a calamitous time for the Etruscans. The year before, Ol. 99. 1, Dionysius of Syracuse, under the plea of punishing their piracies, had sailed with sixty gallies to the Tyrrhenian coast, and had taken the harbour of Caere, the Pelasgian Pyrgi, after very little resistance; as the Caerites, who were perfectly innocent[89], could not expect an attack. The tyrant's object was to plunder a temple of Matuta, which

[1086] XIV. 98. Ἐπὶ has dropt out before Σούτριον, but this is the only change required. The name of that town cannot have got in by accident; and the person by whom our text of Diodorus was patcht up from some torn manuscript, was utterly ignorant of every thing connected with Rome, as is sufficiently proved by the misshapen names in his Fasti: he assuredly had never heard of Sutrium.

[87] Livy, v. 32. According to Diodorus, XIV. 109, the battle was fought near Gurasium.

[88] Salpinum therefore may put in its claim to be the nameless *urbs vetus*, Orvieto.

[89] Strabo, v. p. 220. c.

was exceedingly rich in votive offerings. He found five hundred talents of silver and gold there; and with these and a number of captives he reembarkt with impunity. The Caerites had marcht out with the utmost haste to defend the temple against him, but were defeated, and their territory ravaged[1090]. In the same year the Roman consuls, L. Valerius and M. Manlius, were compelled to abdicate by an ordinance of the senate, three months before the close of their office: and the only cause assigned is the pestilence which prevailed, and by which they are said to have been attackt[91]. Such a motive would have been quite unexampled, and was assuredly fabricated with no other ground than the fact that one of the censors did actually die. There can be no doubt that they were deposed, and that the reason was their having failed to give due succour to a town, which protected the valley of the Tiber on the side of the sea, and which must have been united to Rome by the most amicable ties, since the objects of her national worship were deposited two years after within its walls: not to mention that, through the whole of the Veientine war, Caere had at all events refrained from every act of hostility against Rome. Besides the expedition of Dionysius could not but be viewed with alarm, since the Greek cities in Italy were already dependent on him, and his settlements on the Adriatic, and on the coasts of the Umbrians and Venetians, betrayed that he entertained schemes against the whole of the Italian peninsula. Nor were those schemes to be despised at a time when he would have found no difficulty in alluring the Gauls, with whom he had made friends in the early part of his reign, to march whithersoever he pleaaed, at the mere price of the booty they might carry off.

[1090] Diodorus, xv. 14: compare Wesseling's note.
[91] Livy, v. 31.

INTERNAL HISTORY
DOWN TO THE WAR WITH THE GAULS.

There seems to be a similar incorrectness in the statement of the reasons why the military tribunes of the year 353 abdicated two months and a half before the regular time; in consequence of which their successors came into office on the first of October, as continued to be the practice down to the change just spoken of. After the defeat before Veii, caused by the fault of two members of the college, it was right to deprive these of their *imperium*. But it would have been no less absurd than unjust to depose the whole body at a moment when such a disaster was to be repaired. The alteration however rendered the election of plebeian military tribunes more difficult: and this was no doubt the end the patricians had in view, not a merely incidental advantage. The election of military tribunes as well as that of tribunes of the people was held at the close of the year of office. The latter went out three days before the former: and nothing could be so powerful a recommendation of a candidate against the means which the patricians had of controlling the elections, as his having acted honorably in the tribuneship, from which he had just retired. Now however that the appointment of military tribunes was transferred to the first of October, an ex-tribune was no longer eligible, till he had been above nine months and a half out of office; in the course of which time the people

must already have become estranged from him, more especially as he had not the power of addressing them during it.

Against the tribunes then in office indeed there was no need of any such measures. They had never opposed the will of the faction whose sentiments had again become predominant in the senate: on the contrary they voluntarily offered their aid to compell the military tribunes to abdicate, on their refusing to do so[1092]. How completely they were under the influence of the adverse party, appeared at the elections for the next year[93]. In such a state of things it was inevitable that the public voice would call for men of the most resolute character. Such persons must have been excluded by the tribunes who presided: at the same time the candidates of the patrician faction could not succeed in getting a sufficient number of votes. Hence the election was closed, in direct violation of the Trebonian law, when only eight tribunes had been appointed. The oligarchy now dreamt that the counter-revolution was already close at hand, and promist themselves to fill up the two vacant places with patricians. But their illgrounded hopes were to be disappointed. The eight tribunes who had been elected did indeed choose themselves two collegues, but out of their own order: nay it is far more probable that the artifice was totally baffled, than that these two were selected from

1092 The coming forward of the tribunes of the people against the military tribunes, as related in Livy, v. 9,—who had forgotten the story he told in IV. 26,—is assuredly a historical fact: but what took place at the election proves how far removed they were from trying to encroach on the authority of the senate. Perhaps there may also be historical ground for the threat of Servilius to proclaim a dictator.

93 If the minority in the tribunician college had already obtained the right of asserting their veto (see p. 448), it must have been entirely unanimous before it could conduct the elections in so treacherous a manner.

among the tools of the oligarchy[1094]. At all events the college of tribunes of the year 354 acted as if it consisted entirely of friends of the people. Their vigour and their success corresponded to the vehemence of that disgust, which even temperate men feel at faithlessness and wiles. The faction probably repented bitterly of their rashness. The two delinquents of the preceding year were condemned to a fine by the people: and an agrarian law put an end to the frauds by which the payment of the tithe had till then been eluded[95]. The houses were fain to confirm it: for the troops in the camp called menacingly for pay; and the tribunes would not allow it to be wrung from the plebeians who had staid at home, the kindred of those who were bearing arms in the field. After gaining such an advantage, the people was ready to exert itself in raising its leaders to posts of honour: and as amends for the violence done to the law during so many years, the patricians agreed that at the next election of military tribunes all, save the prefect of the city, should be plebeians[96]. Such were the fruits which the oligarchs reapt from their craft.

[1094] It was necessary that the vacant places should be filled: hence it might naturally be inferred, however erroneously, that, the object at first having been to appoint patricians, the persons appointed must have belonged to their party; *haud dubie patriciorum opibus:* Livy, v. 10. C. Trebonius however, and the three tribunes who impeacht the defaulters of the preceding year, must at all events have been free from patrician influence; and their votes were equal to those of the other four who had been elected.

[95] See p. 429, note 948.

[96] Livy says that all except P. Calvus were patricians: yet on the contrary all the names which we find in v. 12, except L. Furius are plebeians, as has been remarkt long ago: See Perizonius, 8. p. 353, foll. P. Maenius however has only got into the text through a conjecture by Sigonius, in the room of P. Manlius (Vulso), as the name stood in the earlier editions and in some of the manuscripts, none of which has *Maenius,* but which vary between *Manlius* and *Mamilius;* and besides in the newly discovered fragments of the

There were some among the patricians who did not deserve that name. In this same year the military tribune, Cn. Cornelius, ordered that a third *stipendium* of a hundred ases a month should be paid to those horsemen who furnisht their own horses, a custom which had begun two campaigns before, to put them on the same footing with those who were supplied with a horse by the state. There is no need of any argument to shew that the persons whose reasonable demands were thus satisfied, must have been mainly, if not wholly, plebeians. Cn. Cornelius, and his half brother, P. Licinius Calvus, an ancestor of the poet, seem to have been the mediators of the peace: Calvus in the college of 355 was the leading person among the four tribunes of his order[1097]. The government of these tribunes was irreprehensible, nay glorious: that of their successors, among whom there is but a single patrician, the pretor[98], was no less so. But a terribly hard winter, followed by a pestilential summer, afforded the priests a handle for declaring that the gods were visibly displaying their anger at the profanation of their auspices by unworthy persons. To the influence of these speeches, and to the earnest exertions

Capitoline Fasti, and in Diodorus, xiv. 47. That the person who held the election was directed to take votes for plebeians by a formal compact, may be seen from the example of 358: *donec convenisset ut major pars tribunorum militum ex plebe crearetur:* Livy, v. 17. The electors did not need any such stipulation.

1097 As the authority of Duker in his notes on Livy deservedly stands very high, I cannot omit to remark, that his notion, that Calvus was also termed *primus e plebe* in the Capitoline Fasti, can only have been occasioned by an interpolated edition of them.

98 P. Veturius: according to Livy, v. 13, and Diodorus, xiv. 54. On the contrary the newly discovered Capitoline Fasti have two patricians, Minucius Augurinus and Servilius Priscus, instead of L. Atilius and Cn. Genucius: that is, the places are equally divided. This looks like an instance in which the curies refused to confirm the election, whereupon the persons named in the Fasti were chosen to make up the number.

of the whole order, Livy attributes the result of the elections for 357; at which, and at those for 358, the plebeians, as they had been previously, were entirely excluded. But for 359, when again all the places except one are filled by them, this majority had been guaranteed to them before the day of election[1099]; and thus it seems as if there had been a compact during those four years, stipulating that for two years in succession the wardenship of the city alone, and then for the next two the whole college should be filled by patricians. As soon as Veii had been subdued, the rulers no longer thought themselves bound by this compact: and henceforth down to the Gallic war we hear nothing of plebeian military tribunes: nay for two years the centuries are compelled to appoint consuls.

After that conquest disputes arose with regard to the possession of the domain, and their vehemence was proportionate to the richness of the prize. The tribunes of the people however did not merely demand an assignment of land for their order, but also that the dwelling-houses in the conquered town, the buildings of which were much handsomer than those at Rome, should be distributed by lot, not however among plebeians alone. Livy says, they designed that Veii should be inhabited both by the senate and the plebs. But the distinction drawn in early ages was not, as in his time, between the commonalty and the senate, but between the commonalty and the houses: and the object of the proposition must have been that the assignment of property in lands and houses should in this instance embrace the whole nation.

If Veii had continued to subsist as a city inhabited by Romans, even supposing it had been governed by a

[1099] Livy, v. 17, quoted in note 1096. Here again we find P. Maenius where he has no business; this time instead of Q. Manlius: see note 866.

prefect, without a senate and elective magistrates of its own, still the unity of the republic would have been endangered: and it would have been entirely dissolved if, in case of a new secession, the plebeian magistrates had fixt their seat there. Thus far, therefore the resistance of the senate, and the interposition of two of the tribunes, who protracted the discussion during 360 and 361, was not only justifiable but praiseworthy: only the assignment of lands, which at length put an end to the quarrel, ought to have been granted from the first. It was not however till the year 362,—after failing to get the two tribunes who opposed the measure reelected, and when these had been condemned to a fine of ten thousand pounds of ancient money[1100], for having betrayed the interests of the commonalty,—that the patricians submitted to the necessity of setting bounds to their cupidity. There was nothing now to prevent the passing of the disastrous proposition: and though the curies might have rejected it, which by the letter of the constitution was sufficient to nullify it, their right was at least quite as incapable of being enforced, as the royal veto would be against a bill carried by a great majority of the other two branches of the legislature in a determined struggle with the crown. The salutary consequences of the union of the two orders in the national tribes now became manifest. The senators addrest themselves with remonstrances and entreaties to their plebeian tribesmen: their assurance that a reasonable assignment of land should be granted found credit; and the bill was rejected by eleven tribes out of twenty-one. The next day a vote of the senate, with the show of a free act of grace, ordained an assignment of plebeian hides of seven jugers not only to every father of a

[1100] Before the time of the decemvirate Livy in speaking of fines uses *aes* by itself; for instance in II. 52: now he says, so many *millia aeris gravis:* see V. 12. 29. 32. Hence, it seems, we may infer that since the Twelve Tables mulcts were fixt in ancient money, without regard to the diminution in its weight.

family, but to every free person in it[1101]: which however is hardly to be understood of all the members, without distinction of sex, though this must have been the sense put upon the words by the writers who said that every citizen received eight and twenty jugers[2].

There had been another assignment prior to this. The patricians had hoped to satisfy the plebs with lands taken from the Aequians, while they appropriated the territory of Veii to themselves. 10750 jugers were distributed among 3000 veterans in the year 360[3]: but the end was as far from being attained, as the settlement of the colonists was from prospering. Circeii seems to have been wholly given up to the allies.

During the discussions about the territory of Veii, Camillus had incurred universal odium. His vow of consecrating the tithe of the spoil, which he had been so tardy in declaring, was regarded as a spiteful invention. Hence his impeachment by the tribune L. Apuleius in 364 brought him before judges very unfavorably disposed toward him. It charged him with having secreted some precious articles from the spoils of Veii[4]. Nor is this pronounced to be a calumny either by Livy or by Plutarch; although they speak of his prayer in such a manner, that its fulfilment is to lead the reader to imagine

[1101] Ut omnium in domo liberorum capitum ratio haberetur: Livy, v. 30.

[2] Diodorus, XIV. 102. The usual calculation was four persons to a family: see note 147.

[3] $3\frac{7}{12}$ jugers: Livy, v. 24: so that each plebeian century contained fourteen lots, instead of seven as at a regular assignment: see pp. 162, 163. 3000 was a legion of veterans: see note 958.

[4] Livy merely says, *propter praedam Veientanam*: v. 32: Plutarch, *ἔγκλημα κλοπῆς·* Camill. c. 12: Zonaras, *κατηγορήθη ὡς μηδὲν τὸ δημόσιον ἐκ τῶν Τυῤῥηνικῶν ὠφελήσας χρημάτων, αὐτὸς δ' ἐκ τούτων σφετερισάμενος·* VII. 22. In Victor, de vir. ill. 23, the charge is less disgraceful: *quod equis albis triumphasset, et praedam inique divisisset:* while some writers referred to by Diodorus, XIV. 117, said his only fault was his arrogance.

what they do not venture to assert. He cannot possibly have been deemed innocent by the writers who related that brazen doors taken from Veii were found in his house[1105]: and it is as well attested as anything handed down from this period, that the clients who were enrolled in the tribes, on being solicited to get him off, declared, that they could not acquit him, but would join to pay the fine to which he might be sentenced[6]. This is the candid answer of honest men, unable to deny the manifest guilt of a person to whom they are bound by strong ties, though they do not conceive that it absolves them from their obligations to him. His own clients were the last persons who could acquit him; because by so doing they would have exonerated themselves from a burthen. Everybody else might have done so; for in the sentence of the people judgement and mercy were undistinguishably mixt up together: and the nation for its own sake ought to have pardoned so great a man[7].

[1105] Plutarch, Camill. c. 12. Not to decorate his house with them; but brass in whatever form was just as good as money.

[6] *Se collaturos quanti damnatus esset, absolvere eum non posse:* Livy, v. 32. In Plutarch the important feature is left out: *πρὸς τὴν κρίσιν αὐτοῦ μηδὲν οἴεσθαι βοηθήσειν·* c. 12. In the extracts from Dionysius the consultation with his kinsmen and clients before the day of trial is entirely omitted; they pay the money after he has been condemned; but the disgrace drives him from Rome, p. 19, 20.

[7] The penalty according to Livy was 15000 ases. Plutarch, Camill. c. 13, probably merely took his statement from Livy; just as Zonaras, VII. 22, in his turn transcribed from Plutarch. The latter in this passage was not copying from Dionysius, who, as we see by the *Excerpta*, had met somewhere or other with the sum of 100000 ases, and caught it up; and who tells us besides that this was many times as much as Camillus was worth. Appian, Italic. 8. 2. p. 39, carries it up even to 500000: that is to say, he confounds the mulct with which Camillus was threatened during the discussions on the Licinian law, with the fine to which he was condemned. The difference between the two first-mentioned sums may perhaps be accounted for by supposing, that the first was the value at which the property he embezzled was estimated, the second the fine imposed on him in consequence.

Was it from malicious jealousy that his fellow patricians, thinking themselves as such fully equal to the man whom all the world besides called the first among them, refrained from attempting to effect a reasonable compromise for him, though they had formerly strained every nerve to screen the murderer Caeso from punishment? Or was the transgression of Camillus absolutely undeniable? and did the baseness of the act withhold those who would not have scrupled to come forward in behalf of a deed of open violence? Was he declared guilty at a previous trial before a senatorian arbitrator, and had the tribes only to determine the sum he was to repay? Was not the sentence of the plebeian tribes confirmed by the patricians themselves? The ordinance of the curies which restored his civil rights, seems to infer that there had been a previous one to deprive him of them: whether we suppose that it was to confirm the sentence of outlawry pronounced by the centuries, after he had withdrawn himself from the law by emigrating, or rather that state-trials at this period came before both the plebeian tribes and the curies, in the same manner in which they both united to enact laws and to hold elections. I shall remark at the proper season, that the trial of Manlius becomes intelligible if we suppose this to have been the procedure: and it is difficult to believe that a person who went into exile on being merely condemned to a fine or a repayment, would have been outlawed, since the sum was secured either by his property or his sureties. Or did the sentence, however it may have been delivered, entail the consequences of a *judicium turpe*[1108], because the act was in reality a disgraceful one? and did this destroy all the civil rights of the offender in such a manner that nothing but the supreme power of the populus could restore them? The solution of the question assuredly lies within the range of these cases: but to pronounce upon it with confidence is impossible.

[1108] See p. 399.

There can be no doubt that M. Manlius at this time was already the sworn enemy of Camillus: and he was probably at the head of his adversaries in the senate. It cannot have been by a mere stroke of chance, that just before, when the consuls, of whom Manlius was one, were compelled to resign their office, Camillus was chosen interrex.

Greatly as the actions of Camillus have been magnified by fiction, the belief of posterity that he was the first man of his age, and one whom Rome herself saw few to equal, cannot possibly have been grounded on a delusion. In such a man the nation ought to have shewn indulgence even to deplorable faults: although it is scarcely possible that any mortal could have averted the defeat on the Alia. As it was, Rome even forgave him his ruthless prayer, by which, as he went forth from her walls, he consummated his guilt, that the republic might soon have bitter cause to regret him. This was not the prayer of Demosthenes when he was driven into exile, though innocent, and only punisht for his fidelity. Even spirits of less purity among the Greeks, though they wanted many of the virtues of the best age of Rome, never went thus astray.

PHYSICAL HISTORY FROM 305 TO 365.

THE ferment of the elements, which prevailed toward the close of the third century of the city, continued through the first half of the next century, and aggravated the miseries of the Peloponnesian war, which during that period[1109] was ruining Greece. At that time, says Thucydides, we experienced, what former ages knew only from tradition, earthquakes, spreading widely and of tremendous violence, terrible drouths, and famine in consequence, and the plague. Etna too during the same period threw out a stream of lava.

On these spasms of the earth Greek history gives us far more information: yet the Roman annals also speak of visitations which unquestionably belong to the same series. In the year 319 there were earthquakes, that recurred frequently, and threw down a number of buildings in the Roman territory[10]. These must evidently have been connected with the eruption of Etna, and with the terrible shocks which ravaged the coast of Greece in Ol. 88. 3; even though we find from a comparison of dates that this year at the earliest only corresponds with

[1109] Ol. 87. 1, falls, as near as can be determined, in the year of Rome 315.

[10] Crebris motibus terrae ruere in agris nuntiabantur tecta: Livy, IV. 21: an expression which is evidently accurate: for the city itself is seldom affected by earthquakes, though an inscription in the Colosseum proves that this building was very much damaged by one in the fifth century.

the year of Rome 320[1111]. In the year 327 the wells and streams were dried up: the cattle and the fruits of the earth pined away for want of water[12]; an equally terrible drouth prevailed six and thirty years after, and spread similar misery around[13]. Both times a destructive epidemic disease ensued. In southern climates every famine without exception may be said to arise from drouth[14]: we may therefore conclude that there must have been a dry season in 322, when the country was visited with pestilence and dearth[15]; and the same in 343, since an unhealthy summer was succeeded by a scarcity the next spring[16]. Between this year and 363 came the terrible winter of 355, the severity of which was perhaps unequaled except by that of 476. The Tiber was choked up with ice; the snow lay seven feet deep[17]; the roofs of many buildings fell in under its weight; or the walls gave way at the thaw; fruit-trees and vines were frozen down to the root: an incalculable quantity of cattle perisht from want of food, which in winter they seek in the pastures on the coast[18]. Such a calamity, which a large state, when only some of its provinces suffer, will soon recover from as a whole, must have struck Rome, where no one altogether escaped, just in the same manner as the ravages of an enemy.

This deviation of nature from the character of the climate, like that other terrible winter the memory of

[1111] According to the date of the taking of the city it would coincide with 321: but our mode of determining that date may not be precisely applicable half a century before.

[12] Livy, IV. 30. Dionysius, Exc. M. 3. p. 4.

[13] Dionysius, Exc. 18. p. 18.

[14] This is directly mentioned by Thucydides among the calamities of the age as the cause of the famine: I. 23.

[15] Livy, IV. 25. [16] Livy, IV. 52.

[17] Dionysius even says, where it was least deep.

[18] Livy, V. 13. Dionysius, Ex. 6. p. 7.

which was preserved in the Roman Annals, was undoubtedly a consequence of internal convulsions, such as manifest themselves in earthquakes and volcanic eruptions. For the rise of the Alban lake, which occurred immediately after, must manifestly have been occasioned by the stoppage of some subterraneous outlets, as was the case with the Boeotian and Arcadian lakes. In the latter instance the chasms near Pheneus, through which the waters of that mountain-basin had hitherto run, were blockt up by earthquakes[1119].

The plan of breaking a tunnel through the wall of lava, instead of directing the course of the stream, which was running over on the lowest side of the lake[20], into a regular channel, was adopted for two reasons. It was a preventive against the violent floods that would have taken place whenever the waters received any extraordinary increase: and the space between the level at which the lake overflowed, and that of the tunnel, at which the banks are six miles round, was an object of great value; even supposing that the ground in those days as now was mainly employed to grow wood. The object was not to gain new land, but to recover what the proprietors and possessors had been deprived of: indeed that which was regained may perhaps not even have embraced the whole of what had been lost in the interior of the crater by the rise in the surface of the lake[21]. In extent this tunnel is much inferior to the works for carrying off the water of the lake of Copac: but the nature of the stone made the execution a task of enormous difficulty. It is lava, hard as iron, through which a passage

[1119] Strabo, VIII. p. 389, b.

[20] All the modern writers who describe the tunnel, in treating of the phenomenon which rendered it necessary, draw their views of it exclusively from Livy, and therefore assume that matters had not yet come to this.

[21] A circumstance, which leads us to conclude that the surface of the lake had previously been lower, is mentioned in Vol. I. p. 200.

was broken, high enough for a man to walk in it, three feet and a half broad, and six thousand feet long[1122]. On the line of its course some fifty shafts were let down as far as the bottom of the projected tunnel; whereby its level and direction between the two extremes was accurately determined and preserved, and the execution, at least of the part toward the Campagna, was very much expedited: for as soon as the pits were carried down to the bottom, workmen might begin hewing away the stone in each of them on both sides, till they met. Without knowing their depth on the side toward the lake, one cannot say how far the same advantage was gained there: at all events they afforded the means of raising up the broken stones with little trouble, and after the work was completed, of keeping the channel clean, and of irrigating the fields on the hillside by means of water-wheels. From an inspection of the spot it has been ascertained that, at the time when there was only a thin wall between the tunnel and the lake, a hole was bored through it, and the water was let off down to the level of the mouth of this bore: after which the side toward the lake was walled with flagstones, and a magnificent portico was built in front of it. The water serves to feed the dry fields of the Campagna; and the surplus is carried by brooks into the Tiber.

This terrible winter was followed by an exceedingly unhealthy summer; and the Sibylline books were applied to for counsel against these manifold calamities. By their command the first *lectisternium* ever held was celebrated in 356, in honour of six Greek deities, and for seven days the whole town offered up joint sacrifices, while every citizen according to his means gave hospitable entertainment at sacrificial banquets. It was a time of anxiety, which turned men's minds to kindness and goodwill. The

[1122] Westphals Roemische Campagna, p. 25, compared with Nibby, Campagna, II. p. 81.

unknown stranger was invited as a guest into the house: no door was closed: the debtor was releast from his bonds: slaves, who at other times wore chains, walkt about in freedom: and as in periods of a general enthusiastic excitement no room is left for ordinary temptations, so, the Annals related, during all these days of pious confidence no theft or act of disorder was committed. Their beneficent effect was felt by the miserable even after they were over: it was deemed a sin to lay chains again upon those whom the gods had freed from them[1123].

As to the nature of the epidemic disease which prevailed at that time, nothing is said: those in the years 327 and 363, we learn from a statement which to all appearance is worthy of full credit, were cutaneous. Of the last we have a more detailed account: it began with an eruption of small pimples, accompanied with an intolerable itching: after a time they turned to festering ulcers, which ate through to the very bone[24]. Of a like kind must the disease of 327 have been, which is less minutely described, and which, though without doubt very inappropriately, is termed the itch.[25]. A cutaneous eruption was also a feature of the pestilence which in Ol. 96. 1, U. C. 351, carried off the chief part of the army of Himilco before Syracuse. The statement given of its progress sounds like a description of the measles[26], as

[1123] Livy, v. 13. Dionysius, who cites Piso Frugi, Exc. 7. p. 7, 8.

[24] Dionysius, Exc. 18. p. 19. Εἰς νόσους δεινὰς κατέπεσον, ἀρχομένας μὲν ἀπὸ μικρῶν ἐξανθημάτων, ἃ περὶ τοὺς ἔξωθεν χρῶτας ἀνίστατο, κατασκηπτούσας δὲ εἰς ἕλκη μεγάλα φαγεδαίναις ὅμοια, πονηρὰν μὲν ὄψιν, δεινὴν δ' ἀλγηδόνα παρέχοντα. ἦν δὲ οὐδὲν ἴαμα τῆς περιωδυνίας τοῖς κάμνουσιν ὅτι μὴ κνησμοὶ καὶ σπαραγμοὶ συνεχεῖς, λωβώμενοι τοῖς χρωσὶ μέχρι γυμνώσεως ὀστέων.

[25] Dionysius, Exc. 3. p. 5: ἡ καλουμένη ψωρώδης, δεινὰς ὀδύνας παρέχουσα—κατὰ τοὺς ὀδαξησμοὺς καὶ πρὸς τὰς ἑλκώσεις ἔτι μᾶλλον ἀγριαινομένη. According to Livy, IV. 30, the mange had previously been prevalent among the cattle.

[26] The symptoms in their order were, rheum, swellings in the

what is said of the diseases at Rome reminds us of the small-pox: with regard to both it is an equally perplexing question how they could become extinct again. Perhaps it may have been a disease of the same sort, or a yellow fever, and not strictly a plague, that some eight years before the one in Himilco's camp, in Ol. 94. 1, U. C. 343, after sweeping away half the Carthaginian army in Sicily, fell on the Punic part of Africa and depopulated it[1127].

The pestilence in the years 320, 322, and 323, it is extremely probable, were connected with the one in Attica, the first breaking out of which, in Ol. 87. 3, took place, as nearly as we can make out by our comparative chronology, in U. C. 317, the second in Ol. 88. 3, or U. C. 321. Rome also probably experienced a similar sickness in this year; and the mention of its continuance, which accounts for the absence of any military expedition under this as under the preceding and following year, was merely overlookt by Livy. The year 320 seems to have been peculiarly destructive, since a day of general prayer was appointed, at which the people repeated a form of words recited by the duumvirs; and so does 322, in which a temple was vowed to Apollo[28]. If this was a dry year,

throat, fever with aches in the back, and torpour in the legs, diarrhea, and an eruption over the whole body: delirium was frequent: death ensued mostly on the sixth, but sometimes so early as the fifth day: whoever went near a patient was infected. Diodorus, XIV. 71. The eruption he calls φλύκταινα, a word the meaning of which is as extensive as that of our *eruption*, and is not merely confined to pustules or watery blisters: see Foesius upon it.

1127 Diodorus, XIII. 114. XIV. 41. 45, (where he says τὸν λοιμὸν τοὺς πλείστους τῶν κατὰ Λιβύην διεφθαρκέναι), 47: ὁ λοιμὸς παμπληθεὶς τῶν Καρχηδονίων ἀπεκτάκει. In the chasm between chapt. 113 and 114, which the framer of the copy whence all the manuscripts now preserved are taken has disguised by cutting away the mangled shreds, stood the account of the pestilence that broke out in the Punic camp.

28 As the sender and the averter of pestilence according to the

the drouth may have fanned the disease; just as the earthquakes, if we suppose that since the year 297 the poison had lost its force in the centre of Italy, may have rekindled the glimmering embers, or may have produced a susceptibility to contagion from forein parts. These diseases however were not so deadly as the previous pestilences.

The distress brought on by them did not prevent the power of Rome from making rapid strides. Towns which held out for thirty years against the republic after it reacht its maturity, bowed before its arms even in these early days: though it is true they were afterward forced to fight to avoid subjugation, whereas they had now only to buy off the enemy's ravages with money, in which the Etruscan towns were much richer than in citizens. The frontier formed at this time toward the north was not extended for the next seventy years. Indeed afterages lookt upon it as insurmountable; and it was totally forgotten that the legions had once waged war on the other side of the Ciminian forest. So low did Rome fall through the invasion of the Gauls; though she had previously been indebted for her preponderance to their immigration, from which Italy had hitherto been sheltered by its seemingly impassable mountain-barrier.

religion of the Greeks: consequently the Sibylline books were consulted; and the same must have been the case in 320: for the duumvirs mentioned in the text were assuredly the keepers of those books.

ON THE GAULS, AND THEIR IMMIGRATION INTO ITALY.

The persons who carried intelligence to Athens of the destruction of Rome by the Gauls, related, as Heraclides soon after wrote, that Rome had been taken by a great host of Hyperboreans, that is so say, a people who came over the icy mountains from the unknown regions of the north[1129]. Herodotus, writing about the year 330, only knew of the Celts as dwelling in the extreme west of Europe, at so vast a distance that he conceives them to have been seated beyond the pillars of Hercules[30]. He does not place the Celts, but the Umbrians, at the foot of the mountains in which the Drave and the Inn take their rise[31]; nor does he name them among the nations out of which the army led by Hamilcar against Gelo and Thero was raised,—Phoenicians, Libyans, Iberians, Ligurians, Volscians, Sardinians, Corsicans[32]. In aftertimes on the other hand the Gauls always made up a large part of the Carthaginian armies, having already served in those of Dionysius the Elder: so that in the time of Gelo they were still at a distance from those parts where the Carthaginian recruiters might have engaged them and taken them on board ship.

Wherever we have the means of comparing Appian with Dionysius, he has built upon him, so far as Dionysius

1129 Plutarch, Camill. c. 22.

30 II. 33 IV. 49.

31 The Carpis and Alpis: IV. 49.

32 VII. 165.

goes: and as he is not a writer likely to have taken the trouble of seeking for information in more books than one at the same time, we may look upon his express statement, that the Gallic invasion took place in the ninetyseventh Olympiad[1133], as borrowed from Dionysius. That Dionysius was one of the writers who adopted the tradition that an injured citizen of Clusium went across the Alps to seek the Gauls, and lured them into Italy with the pleasures of the South, till then unknown amongst them, is proved by the recently published Excerpta[34]. Hence it was from him that Plutarch took the story; and so without doubt did he the statement which he subjoins, that they immediately made themselves masters of the whole country inhabited by the Tyrrhenians between the Alps and the two seas[35]. This agrees with what Dionysius says in that part of his history which remains entire, namely, that about the 64th Olympiad, that is, nineteen Olympiads after the founding of Massilia, the Tyrrhenians were dwelling on the coasts of the Upper Sea, and were not driven from thence till long after by the Celts[36]. Diodorus places the migration across the Alps immediately before the taking of Rome[37]. In so

[1133] Celt. 2. p. 77. Ὀλυμπιάδων τοῖς Ἕλλησιν ἑπτὰ καὶ ἐννενήκοντα γεγενημένων—ἀνίσταται μοῖρα Κελτῶν—ἱκανὴ—οἳ τό τε Ἄλπιον ὄρος ὑπερέβησαν, καὶ Κλουσίνοις—ἐπολέμουν.

[34] 24. p. 25.

[35] Camill. c. 16. Οἱ δ' ἐμβαλόντες εὐθὺς ἐκράτουν τῆς χώρας ὅσην τὸ παλαιὸν οἱ Τυῤῥηνοὶ κατεῖχον ἀπὸ τῶν Ἄλπεων ἐπ' ἀμφοτέρας καθήκουσαν τὰς θαλάσσας. As he had Livy also lying before him, he adds, it is true, further on, in contradiction with himself: ἀλλὰ ταῦτα μὲν ἐπράχθη συχνῷ τινι χρόνῳ πρότερον.

[36] VII. 3. Τυῤῥηνῶν οἱ περὶ Ἰόνιον κόλπον κατοικοῦντες, ἐκεῖθεν θ' ὑπὸ τῶν Κελτῶν ἐξελαθέντες σὺν χρόνῳ. The expression, σὺν χρόνῳ, is used to signify *a considerable time* in III. 49.

[37] XIV. 113. Καθ' ὃν καιρὸν μάλιστα Ῥήγιον ἐπολιόρκει Διονύσιος, οἱ κατοικοῦντες τὰ πέραν τῶν Ἄλπεων Κελτοὶ, τὰ στενὰ διελθόντες μεγάλαις δυνάμεσι, κατελάβοντο τὴν μεταξὺ χώραν τοῦ τε Ἀπεννίνου καὶ τῶν Ἄλπεων ὀρῶν.

doing he probably followed Fabius: but the tradition that Clusium was the goal the Gauls were seeking is the only reason why the two events are brought into this close proximity. That some time elapst between them, is implied by Polybius; but it was only some time[1138]: and it is perfectly clear, that Trogus Pompeius had the very same notion about the order of these occurrences and their duration. His voice is of the greater weight on this point, because he was sprung either from one of the Gallic tribes, or at least from a people in their neighbourhood[39]. According to his account[40], they set out to the number of three hundred thousand: of these a portion staid in Italy, and took Rome; another part turned their steps toward the Illyrian coast of the Adriatic, forced their way through the nations that opposed them, —the Venetians, whose towns held out against them, like those of the Celtiberians and Belgians against the Cimbrians,—and took possession of Pannonia. This accounts for the expression of Scylax, who, writing about the 105th Olympiad, some twentyfour years after the taking of Rome, says: the Celts on the Adriatic, to the west of the Venetians, were left behind in the expedition[41]: that is to say, that expedition in which such as had advanced further had founded a settlement in a situation so threatening as to have already excited the

[1138] They made themselves masters of the plains of Lombardy by a sudden inroad,—*παραδόξως ἐπελθόντες ἐξέβαλον Τυῤῥηνοὺς καὶ κάτεσχον τὰ πέδια*,—subjugated many bordering states, and after some time,—*μετὰ δέ τινα χρόνον*,—they take Rome: II. 17, 18.

[39] The Vocontians in Upper Provence: it cannot indeed be ascertained whether they were Gauls or Ligurians.

[40] Justin, XXIV. 4.

[41] *Ἀπολειφθέντες τῆς στρατείας.* Scylax, p. 6. He places them on the innermost gulf of the Adriatic, conceiving the Venetians to be on the eastern coast of it. On the age of Scylax see the author's dissertation in his Kleine Schriften, or the translation of it in the Philological Museum, No. II. pp. 245-270.

attention of the Greeks. Scylax however could not be led to say anything more about it, because it was in the interior far from the coast. His Celts on the Adriatic, from their situation, ought to be the Lingones and Senones: perhaps however his statement may in fact relate to the Boians, a part of whom settled on the right bank of the Po, while the rest journied on with the Tauriscans and Scordiscans over the Julian Alps. Their settlement on that coast was then so recent, that the earlier harbourbooks, which he workt up into his Periplus, spoke of the Tyrrhenians in these parts, betwixt the Umbrians and Venetians, as masters of the whole country between the two seas: and Scylax, that he might not omit to make use of the indefinite oral accounts he had heard concerning the conquerors whose coming had overthrown the whole order of things there, inserted them between the Tyrrhenians and the Venetians, instead of putting them in the place of the former. In the progress of their migration they founded the Gallic state in Noricum: and from this nation must the Celtic embassadors have come, who congratulated Alexander in so fearless a manner on his victory over the Getes, at least if there be any degree of accuracy in the statement that these Celts dwelt on the borders of the Adriatic[1142]. Even in those days there was another Gallic race, the Scordiscans, living still nearer to the theatre of war, on the banks of the Danube, from whence they had driven the Thracian tribe of the Triballians[43], who, when Herodotus wrote, occupied the plains of Sclavonia and Lower Hungary, and from whom that country in his days was called the Triballic plain. His Angrus is clearly the Drina, his Brongus the Save[44]. Some forty years later, and only six after the taking of Rome, in Ol. 101. 1, these Triballians appear as a people of fugitive wanderers,

[1142] Arrian, Anab. I. 4. Strabo, VII. p. 301. d.

[13] Appian, Illyr. 3. p. 832. [44] IV. 49.

in the middle of Thrace, near Abdera[1115]. Consequently the Celts at that time had already made themselves masters of Pannonia. With such rapidity does a national migration advance, unless there be countries of great strength and bravely defended, or a well peopled and civilized state standing high in power and military glory, to hold it a long time in check; as those Celts were held by the mountaineers of Scardus and Scomius, and by the Macedonian monarchy. When those who burst into Italy had surmounted the Alps, there was nothing to oppose them in the plains, except Etruscan armies which had very seldom been able to withstand the Romans in the open field. Is it possible that anybody, for the sake of upholding Livy's account, can seriously persuade himself that the same people, which, when it had crost the Appenines, pusht forward in a single movement from Clusium to Rome, and then pursued its course uninterruptedly through the midst of the most warlike nations of Italy, and their pathless mountains, as far as Apulia, should have taken two centuries to creep on at a snail's pace from the Alps to the Po? A state that merely sends forth armies may extend its frontier at this slow rate: a people which leaves its home, like the Cimbrians and Helvetians, carrying its women and children along with it, must sweep over vast regions and subdue them, or it perishes. The Lombards were beyond compare less numerous than the Gauls: the Italian fortified towns were able to reckon on the exertions of a great empire to attempt their relief: many of the enemies themselves were seduced by bribes to become deserters and traitors: and yet the whole of upper Italy was conquered in a single generation; while lower Italy was overrun down to its lowest extremity. Within four years of Alboin's penetrating into Friuli, Pavia, after a three years blockade, was reduced by famine, and opened its

1115 Diodorus, xv. 36.

gates to him: and are we to believe that Melpum, lying within a few miles of the passes through which the Gauls came down, and having no prospect of any aid save from the other Etruscans, who had no bond except goodwill to make them assist their distrest brethren, held out for two whole centuries? For the statement that it fell in the same year with Veii is as credible as any can be which does not rest on contemporary evidence, though the coincidence as to the day may probably be an exaggeration[1146]. If the Gauls had all this time been unable to spread beyond the Ticino, they must have wasted away. But if we suppose that they advanced further into the country, a town situate in the plain, which, being surrounded by a swarm of enemies, had no means either of sowing or reaping, must have fallen. The fact however that the Gauls came down into Italy during the war with Veii, and overran all the countries about the Po, must have been present to the minds of the annalists whom Livy was following when he said, that the Etruscans sent excuses to the Veientines, alledging that they could not afford them any assistance, being themselves menaced by the Gauls, a people never before seen, and newly come into their neighbourhood[47]; and when, on another occasion, he calls them an enemy never before seen or heard of, coming from the ocean and the uttermost extremities of the earth[48].

In opposition to these statements of his own, which agree with those of every other writer without exception, and with the internal evidence of the case, Livy relates in another place that the Gauls had crost the Alps two hundred years before, in the time of Tarquinius Priscus, and had built Mediolanum. This date however is merely grounded upon the tradition that their leader, Bellovesus, assisted the Greeks who built Massilia, against the enemies they met with on the coast: for the founding of

[1146] See Vol. I. p. 118. [47] v. 17. [48] v. 37.

this city was placed in the 45th Olympiad[1149], that is, within the period assigned by Roman chronology to the reign of the first Tarquinius. Thus we find ourselves reduced to that tradition alone: and its credibility, which of itself is exceedingly small, is totally destroyed by the traditions of the Massaliots themselves, which, as reported by Trogus, did not say a word about this act of friendship on the part of the wandering barbarians, but on the contrary related that the Phocaeans were received with kindness on this coast by the king of the Segobrigians, who gave his daughter in marriage to their leader*. It was undoubtedly a fabrication, without the slightest historical ground, just like that of the visit of Aeneas to Dido in her newbuilt city. As this exprest the feeling the Romans, even before they went to open war, must have entertained towards the lords of the sea, on whom their arms could make no impression; so it may easily be conceived that the Gauls, in their gratitude to the Greeks of Massalia, from whom they had received all their civilization, and whom they regarded with no less goodwill[50] than the Samnites felt toward the Italian Greeks, should have found a pleasure in representing their ancestors as the benefactors of the original setlers. Besides it is historically true that both the Massaliots and the Gauls did actually engage in wars with the Ligurians, but at a different period, and in a different manner. As the Salluvians were perpetually attacking the Massaliots, so the Gauls took possession of Languedoc and the county of Avignon; in which last country we see from the name

[1149] Timaeus, in Scymnus Chius, vv. 210-214. *Temporibus Tarquinii regis;* Justin, XLIII. 3. Others placed it in the 57th Olympiad (see Valesius on Ammianus, XV.9): a discrepancy which it would be uncandid to take advantage of against Livy; for it rests on a decided mistake.

* Justin, XLIII. 3.

[50] Strabo, IV. p. 181. a. Ἡ πόλις κατεσκεύασε φιλέλληνας τοὺς Γαλάτας. p. 199. a.

of the Celto-Ligurians that the two nations were living mixt together by conquest.*

That the legend related by Livy is a homesprung Gallic one, cannot be doubted, whatever may have been the way in which he became acquainted with it; and as such it is worth recording. It stated that, at a time when the Biturigians were exercising a supremacy among the numerous Gallic tribes, which were incapable of uniting into a regular confederacy, the population was so great that the king, Ambigatus, granted permission to his nephews, Bellovesus and Sigovesus, to lead bands of immigrants to new abodes. A countless multitude gathered around them, so that no people could resist them. They followed the course pointed out by the auguries they had observed; Sigovesus along the skirts of the Hercynian mountains, Bellovesus toward Italy. At the foot of the Alps the latter was told that some strangers were come across the sea, whom the Salluvians would not allow to form a settlement. He marcht to assist them; and the gods to reward him opened a path for him through the Alps. He defeated the Etruscans on the Ticinus, and built Mediolanum. People after people followed, till at last came the Senones, who advanced to Clusium and to Rome.

I have no doubt that the representing the emigration as a voluntary act, occasioned by the consequences of extraordinary prosperity, was also a fiction of the bards to flatter their countrymen. It must assuredly have been compulsory, the result of distress, and of the pressure of a superior power, just as events of the same kind have been in later times. By taking a survey of the west of Europe, we may discover the truth, which history does not reveal. In Spain the Romans found two Celtic tribes still extant, the Celticans on the Anas, and those on the Minius: and beside these the Celtiberians. With

* See vol. I. p. 165.

regard to these three nations it seems to have been the universal opinion, that the Celts crost over the Pyrenees as well as the Alps, and that from their intermixture with the Iberians, whom they conquered, sprang the nation in whose name this intermixture is exprest; while a part of their host settled on the Anas, and some of these went on still further to the Minius. But not the slightest trace is to be found of any story concerning this expedition[1151]. The notion was probably nothing more than a conjecture made by forein historians with regard to a nation which had spread so far beyond its borders on other sides. Supposing however that they really had a tradition to follow, this may be merely another instance in which the course of events has been inverted by fancy. Now in everything that we know of the Celtiberians, the Iberian character is so clearly markt, that it can hardly seem dubious which was the ruling people. Their manners exhibit no feature of the Celtic character: their names were Iberian: their constitution was republican. Their territories among the mountains separating the course of the Iberus from the Baetis and from the rivers which flow westward, and along the upper vallies of these streams, the Tagus and the Durius, are evidently a country in which a nation, after being driven out of more smiling regions, will still maintain its footing. But though portions of a brave nation which has been overpowered may hold out in the insulated condition in which we find the Celticans in the west of Iberia,—the Raetians for instance, and the Vindelicans did so,—no nation of invaders ever settles in this manner in the midst of a warlike people: it was among Phrygians that the Galatians took possession of the hills. To the north of

[1151] Not in Diodorus, who here also was probably copying from Posidonius, and merely speaks of long-protracted wars terminating in the union of the Celts and Iberians. Strabo indeed in general terms assumes that the Celts were the invading people: he naturally supposed that the matter was self-evident.

the Pyrenees the Iberians were spread over Aquitania. According to no hypothesis can we believe that they became possest of it in any other way than by conquest: and everybody must see that they kept on advancing to the north of the mountains, as long as one tribe pusht on another. In Languedoc too we find them in the time of Philip, intermixt with Ligurians[1152]: and here also one would incline to look upon them as immigrants, were not the statement that they had been driven by the Ligurians from the neighbourhood of a river called Sicanus*, perfectly valid evidence that the latter were the people which gained ground upon the other: although the situation of that river is unknown, and the notion that the Iberians went from thence to Sicily is scarcely credible.

Now while I consider it as manifest, from the circumstances under which we find the Celts in the Spanish peninsula, that what the Iberians possest there at first was merely Baetica and the south-eastern coast, it would appear from what has been said that at the same time they must also have spread along the same coast beyond the Pyrenees as far as the Rhone. It will readily be seen how probable it is that the nation, which at one period peopled all the islands in the western part of the Mediterranean, was at the same time master of a considerable part of the coast around the basin of the sea that encircles them. Nay a conjecture forces itself upon us, that in a still earlier age the Iberians must also have been dwelling along the coast of Africa, till they were compelled by the coming of forein tribes, whom the Punic traditions called Medes[53] and Persians headed by Hercules, to retreat amongst their kindred on the other side

[1152] Λίγυες καὶ Ἴβηρες μιγάδες, μέχρι ποταμοῦ Ῥοδανοῦ. Scylax, p. 2.

* See Vol. I. p. 164.

[53] Sallust, Jugurth. c. 18. The name of the Medes was suggested by that of the Amzigh, Mazyes.

of the sea. It is not however by any means necessary to assume that any tribes from other parts were driven upon the Iberians in Baetica, and thus made the country too narrow to hold them, in order to render it intelligible that they should have burst through the Sierra Morena, and overpowered the Celts, and that then, after having spread over all that part of the peninsula to which they had previously been strangers, they should at last have crost over the western Pyrenees.

The numerous harbours on the north coast of Spain invite its inhabitants to become seamen; and the rough waters of the Bay of Biscay train them. The Basks used to sail out into the Atlantic on their great fisheries, at a time when the other southern Europeans never ventured to steer away from the shore: and their ancestors may easily have had a sufficient number of ships to convey a tribe of colonists to Britain, where there were the tin-mines to allure them. The remark made by Tacitus, that the features, hue, and hair of the Silurians, who lived on the coast opposite to Spain, were arguments in favour of their Iberian origin[1154], deserves quite as much weight as if it had come from any ethnographer of our own days: their language may have fallen into disuse. His testimony cannot have been known to the Irish monks, so as to have been the foundation on which they reared their story of the Milesian immigration from Spain: hence this must probably have been an ancient tradition.

The original inhabitants of Britain were Gauls, who, according to the accounts of the Druids[55], were masters of the islands as well as the continent in the west of Europe from the earliest times. But they had been driven back from the south coast, when Caesar landed there,

[1154] Tacitus, Agricol. 11—*fidem faciunt.* Their origin is not an inference which he himself draws from these circumstances: but he looks upon them as proofs of the truth of a current opinion.

[55] Ammianus Marcellinus, xv. 9.

not only by the Silurians, but also by the Belgians[1156]. The latter was the Gaelic name of the people which has called itself Cymry down to the present day. This their indigenous name was overlookt by the Romans, but not by the Greeks: it was assuredly that excellent ethnographer, Posidonius, who called them Galatians and Cimbrians[57]. Their language, though by no means merely a corrupt dialect of the Gaelic, but originally distinct from it both in its words and its grammar, is nevertheless akin to it, as Sclavonic is to Lithuanian: and it differs so much from all other languages, that the two nations, the Cymry and the Gael, may appropriately be comprised under the common name of Celts. The traditions of the Druids further related that a portion of the Celts had come from beyond the Rhine[58]. This can only apply to the Belgians, who seem to have made great encroachments in early times upon the Gaels, not only in the island of Britain, but likewise on the continent. The Seine and Marne cannot always have been their southern frontier: they must at one time have stretcht at least as far as the Loire. The Venetians were a Belgic tribe[59]; and so without doubt were all the inhabitants of lower Brittany, whose Cimbric character seemed so evident in the time of the Romans, when all the country round about was peopled by Gaels, that a late immigration from Britain was invented to explain it. The southern part of these provinces they were forced to evacuate again, when the Gaels were compelled to retire northward before the Iberians; and this same event seems to have been the cause of the great Gallic emigration. In the aforementioned account taken from Posidonius the Belgians are called Galatians, the

[1156] Caesar, de Bello Gal. v.12.

[57] Diodorus, v.32. His whole section upon the Celts (v.25—32) is assuredly taken from no other source.

[58] Ammianus, xv.9.

[59] Strabo, iv. p.194. d.

Gaels Celts[1160]. The former was the name used by the Greeks to designate the tribes that penetrated into the east of Europe: beyond doubt the Belgians formed at least a preponderating part of them: the expeditions against Rome and Delphi are attributed to the Cimbrians[61]; and the supposed name of the leader in each is the Cymric word for a king[62]. Nevertheless some of the Gaels may have joined them from the very first, or at least some of the Gaesates, who came afterward in great numbers.

To the north of the Danube they settled beyond the Carpathian and Dacian Alps[63]. On the Borysthenes they subdued the Scythians, and were mixt up with them into one people, which received the name of Celto-Scythians: and they advanced as far as the Maeotis, from whence, being overpowered by a movement of nations from the East, they returned westward, augmented by the accession of many forein hordes, but under the general name of the ruling people, the Cimbrians, by the same road which their ancestors had traveled three hundred years before[64]. I have shewn cause for supposing that the

[1160] The distinction drawn in Diodorus, v.32, is undoubtedly between the Celts near the Mediterranean, and the Galatians, who dwelt further off. It must be owing merely to a mistake, either of the author himself, or of a transcriber, that we find *τὰ πρὸς νότον νεύοντα μέρη*, instead of *πρὸς ἄρκτον*.

[61] Diodorus, v.32.

[62] Brenin: see Adelung's Mithridates, Vol. II. p.49.

[63] *Ὑπερβαλόντες τὰ Ῥιπαῖα ὄρη*. Plutarch, Camill. c.15. I have shewn that the name Rhipaean in early times had no indefiniteness about it, any more than that of Scythian: see the Inquiry concerning the Scythians, Getes, and Sarmatians, Kleine Schriften, p.359, English Translation, p.42.

[64] See the same Inquiry, Kl. Schr. p.384, Transl. p.71: where I ought also to have referred to Diodorus, xv.32, and to have quoted the following passage from Plutarch's Marius, c.11: *πολλὰς κατὰ μέρος ἐπικλήσεις ἐχόντων, κοινῇ Κελτοσκύθας τὸν στρατὸν ὠνόμαζον.*

Galatians on the middle Danube had come across Lombardy: this however must not prevent our acknowledging that some of the Gallic tribes went over the Rhine, for instance the nations that Julius Caesar encountered in those parts[1165], and all such as were to be found in the neighbourhood of the Hercynian forest, to which Livy makes Sigovesus conduct his followers[66]. And here I cannot refrain from inquiring who were the people these met with to the east of the Jura and the Vosges; though well aware that on this point mere probabilities are the very utmost we can arrive at. There is thus much however at all events in favour of the conjecture that the Etruscan race, which maintained its ground among the Alps, with Gauls all round it*, must at one time have spread along the northern skirts of those mountains and into the plains of Germany: and the walls on Mont Sainte-Odilie in Alsace, so far as descriptions and drawings can enable one to form a conception of them, seem strikingly similar in their structure, and their manner of following the outlines of the summit, to those of the Etruscans, for instance those of Volterra, while they are just as unlike a Gallic work as a Roman one. However there must also have been German tribes dwelling even among the Swiss Alps; else the Valais could not have been inhabited in Livy's time by a semi-germanic people[67]. When the Celts were advancing in these parts, the Helvetians, a tribe of immigrants, had made themselves masters of Swisserland, and probably, along with other branches of the same race, of the whole of Swabia. That the country lying between Pannonia and the territories of the Venetians and Istrians was partly in the hands of the Liburnians, partly of the Illyrians, may be

[1165] De Bell. Gall. VI. 24.

[66] V. 34. Sigoveso sortibus dati Hercynii saltus.

* See Vol. I. p. 113, 114.

[67] XXI. 38. Itinera quae ad Peninum ferunt, obsepta gentibus semigermanis.

regarded as certain: since the Vindelicans, a Liburnian race, kept their footing on the north side of the Brenner[1168].

The manners and civil institutions of the two Celtic nations must have resembled each other, at least at the time when the Greeks and Romans described them: only a greater degree of rudeness is attributed to the Belgians, who were more remote from all intercourse with Italy and the Mediterranean. Their internal condition indicates that some conquered tribes were held in servitude under them, as among the Sarmatians in later times. Caesar found, took advantage of, and described a state of disorganization, which is the last stage of misery under a barbarian aristocracy: the knights formed the whole nation; the people lived in the most degrading bondage. Four centuries earlier however there must have been an incomparably greater number of common freemen, from among whom the empoverisht or opprest enlisted perpetually among the serfs of the powerful nobles. Even among the Gauls in Italy there seems to have been a numerous national assembly. At that time too the form of government was everywhere a hereditary monarchy: which, when Caesar went into Gaul, had been swallowed up, as had the authority of the senate, in the anarchy of the nobles. Their freedom was lawlessness: an inherent incapacity of living under the dominion of laws distinguishes them as barbarians from the Greeks and Italians. As individuals had to procure the protection of some magnate in order to live in safety, so the weaker tribes took shelter under the patronage of a more powerful one. For they were a disjointed multitude; and when any people had in this manner acquired an extensive soverainty, they exercised it arbitrarily, until its abuses became intolerable, or their subjects were urged by blind hatred of their power to fall off from them, and gather round some new

1168 See Vol. I. note 503.

centre. The sole bond of union was the druidical hierarchy, which, at least in Caesar's time, was common to both nations. Both of them paid obedience to its tribunal, which administered justice once a year: an institution which probably was not introduced till long after the age of migrations, when the expulsion of the vanquisht had ceast to be regarded as the end of war, and which must have been fostered by the constant growth of lawlessness in the particular states; being upheld by the ban which excluded the contumacious from all intercourse in divine worship and in daily life with the faithful. The druids were not a caste: we have no ground for imagining that youths of low birth were shut out from their schools, where a number of years were spent in learning the verses, which contained their maxims, and their doctrines concerning nature, the world, and the stars, and the essence of the gods and of the soul. These were only to be handed down orally, and never to be committed to writing; although the use of Greek characters, and, as is proved by coins, that of Latin also, was spread among them before the time of Caesar.

The strength of their armies consisted in cavalry. Among their peculiarities were war chariots, driven by a vassal, who in battle protected his lord: in the Italian wars these chariots are expressly mentioned on occasion of the expedition to Sentinum*: but Britain is the only country where Caesar found them still in use. The huge bodies, wild features, and long shaggy hair[1169] of the men gave a ghastliness to their aspect. This, along with

* Livy, x.28.

1169 The ancients always call the hair of the Celts yellow or red: *aurea caesaries:* Virgil, Aen. VIII. 659. Ταῖς κόμαις ἐκ φύσεως ξανθοί· Diodorus, v.28. *Candidi paene omnes et rutili:* Ammianus xv.12. Tacitus on the other hand, who urges the *comas rutilas* of the Caledonians in proof of their German origin, as he does the curly hair of the Silurians in favour of their being Iberians, seems by so doing to deny that the hair of the Celts was of that colour; which

their fierce courage, their countless numbers, and the noise made by an enormous multitude of horns and trumpets, struck the armies arrayed against them with fear and amazement: if these however did not allow their terrour to overpower them, the want of order, discipline, and perseverance, would often enable an inferior number to vanquish a vast host of the barbarians. Besides they were but ill equipt. Few of them wore any armour; their narrow shields, which were of the same highth with their bodies, were weak and clumsy: they rusht upon their enemies with broad, thin battleswords[1170], of bad

agrees with the story told by Suetonius (Calig. c.47), that Caligula had the hair of some Gauls dyed, in order to pass them off for Germans. On this subject I have been honoured with a letter full of information by an anonymous British scholar: but it was unfortunately destroyed along with other papers when my house caught fire. May this note convey him my thanks for his kindness in sending me his observations! They were summed up in the conclusion, that, as all the Celts now have black hair, there must be some confusion between them and the Germans in all such passages as those quoted in the first edition of this history, attributing yellow hair to them. I should concur entirely in this view, the principle of which coincides altogether with my own conviction concerning the permanency of our physical constitution, but that Ammianus is such an excellent witness on the subject, and had lived several years in Gaul. Until some one has solved the difficulty, how he could possibly be mistaken on this matter, let me alledge the circumstance, that among the Germans and Scandinavians yellow hair of yore prevailed exclusively, but now in most parts has even become uncommon, as a reason for assuming that in the case of hair the rule of permanency is liable to an exception.

This subject is connected with a remark relating to one of the many *θαυμάσια* in which perfectly correct observations lie concealed. The children of the northern Celts, said to be born with grey hair (*πολιὰ ἐκ γενετῆς*), which afterward changes into the usual colour (Diodorus, v.25), are the white-headed children of the north-German race, whose hair when they grow up becomes yellow.

[1170] The claymores of the Highlanders, which at Killicranky and Prestonpans decided the day against artillery and regular troops, are of the same kind, but much stouter.

steel, which the first blow upon iron often notcht and rendered useless. Like true savages, they destroyed the inhabitants, the towns, and the agriculture of the countries they conquered. They cut off the heads of the slain, and tied them by the hair to the manes of their horses. If a skull belonged to a person of rank, they nailed it up in their houses, and preserved it as an heirloom for their posterity, as the nobles in rude ages do stags-horns. Towns were rare amongst them: the houses in the villages, which were very numerous, were mean; the furniture wretched: a heap of straw covered with skins served both for a bed and a seat. They did not cultivate corn save for a very limited consumption; for the main part of their food was the milk and the flesh of their cattle: these formed their wealth. Gold too they had in abundance, derived partly from the sandy beds of their rivers, partly from some mines which these had led them to discover. It was worn in ornaments by every Gaul of rank. In battle he bore gold chains on his arms, and heavy gold collars round his neck, even when the upper part of his body was in other respects quite naked: for they often threw off their particoloured, checkered cloaks, which shone with all the hues of the rainbow, like the picturesque dress of their kinspeople, the Highlanders, who have laid aside the trowsers of the ancient Gauls. Their duels and gross revels are an image of the rudest part of the middle ages. Their debauches were mostly committed with beer and mead: for vines, and all the plants of southern regions were as yet total strangers to the north of the Alps, where the climate in those ages was extremely severe; so that wine was rare, though of all the commodities imported it was the most greedily bought up.

Before the foundation of Massilia, and at least ever since the Phocaeans began to traffic with the Ligurian coast, it had undoubtedly been conveyed into the very heart of Gaul: and even as to the tribes who lived far

away from the sea among the Alps, it is absurd to suppose that the blessings of the south were first made known to them by the person who invited the barbarians against Clusium. Whithersoever he drove his mules, the desire of gain might have carried merchants before him. Commerce opens out a way for itself over still more impassable mountains, and among still more savage barbarians. Though history however rejects the incident as demonstrably false, it is well suited to the legend: and every legend which was current among the people long before the rise of literature among them, is itself a living memorial of ancient times,—even though its contents may not be so,—and deserves a place in a history of Rome written with a due love for the subject.

THE WAR WITH THE GAULS, AND THE TAKING OF ROME.

THAT legend related that Aruns, a citizen of Clusium, had been the faithful guardian of a Lucumo[1171], who, when he grew up, abused his intimacy with the family of Aruns to seduce his wife. The tribunals and magistrates refused to give the wronged husband legal redress; whereupon despair drove him, like count Julian, to call in an irresistible foe. He loaded a number of mules with skins of wine and oil, and with rush-mats full of dried figs: with these he went over the Alps to the Gauls, and told them that, if they would follow him, the land which produced all these good things should be theirs; for it was inhabited by an unwarlike race. Forthwith the whole people arose with its women and children, and marcht across the Alps straight to Clusium.

The Clusines called upon the Romans for aid. The senate imagined that the very name of Rome would make the barbarians withdraw. Three of the Fabii, sons of the chief Pontiff, M. Ambustus, were sent to tell them in the

[1171] It can scarcely be by mere chance that in this legend, as in that of Tullia, Aruns is the honest man, Lucumo (Lucius) the profligate. Besides we may surely presume that, at the time when the legend arose, the Romans were not so unacquainted with Etruria, that Lucumo could even in those days be regarded as a proper name: and if so, Aruns may originally have been meant for a man of the commonalty.

name of the senate that they must not touch the allies of Rome. The Gauls made answer, that their own country was too small for them, that they did not want however to destroy the Clusines, provided the latter would share their territory with them. The Fabii, indignant at finding themselves thus treated with derision, forgot that no Roman could bear arms against a people, against which the republic had not declared war; and that, even when war was formally declared, none could do so without bringing down a curse upon Rome and upon himself, unless he had taken the military oath: they forgot in fine that they were embassadors, and as such had been respected even by the barbarians[1172]. In a sally made by the Clusines they fought in the front ranks. Q. Fabius cut down a Gallic chieftain, and was recognized while stripping off his armour. Forthwith king Brennus ordered a retreat to be sounded, that his people might not incur the guilt of shedding the blood of the embassadors. He resolved to demand them of the Romans, and either to get satisfaction, or to wage war with the gods on his side.

He pickt out the hugest of his gigantic warriors[73], and sent them to give the Romans their choice between delivering up the offenders and war. The fecials urged the duty of freeing the republic from the guilt it had contracted, without respect of persons. The majority of the senate acknowledged it: but they shrank from passing a resolution to give up men of the noblest birth to a savage foe and a death of torture. They determined to leave the decision of the matter and its responsibility to the people. Among the latter, compassion overcame all other feelings. Nay they immediately appointed the culprits military tribunes, and then told the strangers, that, so long as a person held this magistracy, he was not

[1172] I have added what was requisite to shew in how many respects the conduct of the Fabii was criminal.

[73] Appian, Celt. 3. p. 78.

amenable to any tribunal, but that when the year was expired, should their anger still continue, they might renew their complaint. The Gauls no sooner received this answer, than they struck their tents, and hastened without resting from Clusium toward Rome. Their horse and foot overspread the open country in innumerable multitudes. Everybody fled before them into the towns. They pursued their course however without injuring the property of the husbandman[1174]. *Our way lies for Rome*, they cried to the guards on the walls under which they past. They would have found the city totally unprepared to resist them, but that a man of the commonalty, M. Caedicius by name[75], heard a voice during the night on the Via Nova at the foot of the Palatine, announcing that the Gauls were approaching[76]. On these tidings all the men fit for service were called out with the utmost haste, and led along the Salarian road against the enemy, whom they met eleven miles from the city where the Alia[77] flows from the Crustumine hills toward the Tiber[78].

[1174] Plutarch, Camill. c. 18. In a fabulous story this may pass.

[75] This M. Caedicius was assuredly meant by the legend as the same person whom the fugitives at Veii appointed their commander, and who, according to the story of Camillus, was deputed to invite him to return.

[76] Dion (Zonaras, VII. 23) is the only writer who places the prodigy at this period: and he is manifestly right. For thus it is a merciful warning from the gods to throw an army into the city; and yet proves the means of Rome's destruction, which destiny had decreed: for the military tribunes rush inconsiderately into a battle. In all the other accounts it is placed much earlier.

[77] This name, which was held accurst by the Romans, is uniformly written with a single *l* in all the manuscripts, even those of the Greek writers. The double *l*, which came into general use through Virgil's means, at the time when every scholar knew him by heart, was adopted by him, as Servius remarks, for the sake of bringing the word into his verse: *quos—infaustum interluit Allia nomen*: Aen. VII. 717.

[78] The words of Diodorus might lead one, though erroneously,

In order that the historical credibility of this story may be duly appreciated, it is enough to remark that the consular magistrates at that period came into office on the first of Quinctilis, whereas the day rendered accurst by the battle was the fifteenth before the calends of Sextilis, that is, in those times, the day after the ides, or, according to our calendar, the sixteenth of July[1179]. Even assuming that the military tribunals were not elected till the last day of June, fifteen whole days would have expired before the Gauls, who are said to have been roused by this insult to start directly for Rome, and to have made such haste that they took the city by surprise, heard of it and performed a journey of only three days march[80]. But we need not waste any criticism on this baseless legend: for in this instance the historical account has not been supprest, as in that of Veii, but has been preserved in a report worthy of full credit, and, we may be assured, taken from Fabius, which may be restored with the help of some introductory statements, and of some details drawn from other sources no less authentic. Here again we shall best uphold the

to infer that it fell into the Tiber on its right bank: see note 1190. The description in Virgil, who assuredly could not be mistaken on such a point, leaves us no room to doubt about the spot; which one might otherwise be easily led to do, since it would be impossible to recognize a stream, such as Livy speaks of, and at the distance stated, among the numerous brooks in that neighbourhood.

[1179] After the reformation of the calendar, the *postr. Idus Quinct.* became XVII. *a. Kal. Sext.* July having acquired two more days. Hence, as the XV. *a. Kal.* was noted in the Fasti as the *dies Aliensis*, it was supposed that these dates, though one and the same, referred to two different days; and from this it was concluded that Q. Sulpicius inquired the pleasure of the gods by sacrifices on the day after the ides, and that he gave battle on the next day but one. We find this confusion even in Livy (VI.1), not above forty years after that reformation. Verrius Flaccus however was perfectly well aware that the *dies Aliensis* was the day of the battle, and that the disaster of the next day but one was the capture of the city: see Gellius, V.17.

[80] Polybius, II.25.

honour of the poetical story, if we do not give it out to be what it is quite impossible that it should be.

It may be regarded as clearly certain that the Gauls came down into Italy through the valley of Aosta. The Salassians, who dwelt in those parts down to the time of Augustus, were a branch of the Tauriscans[1181], and accordingly must have staid behind, while their comrades continued their journey in pursuit of a richer lot. The Taurinians on the other hand were Ligurians: so that, if we suppose the Gauls to have come over the Mont Genèvre, we must assume that they left a forein people between themselves and their home. It would be idle to inquire whether like Hannibal they crost the little, or like Bonaparte the great St. Bernard, and whether their march followed the Isere, or the northern shore of the lake of Geneva. Thus much may probably be well founded, that they gained a victory on the Ticino, which laid the plains of the Etruscans open to them, although the latter still vainly endeavoured to maintain their ground in many a field of battle[82]. Wherever they chose to settle, they exterminated the whole population: for agricultural labourers were of no use to them, and would only have narrowed the pastures for their herds. Beyond their own frontier however, they admitted many nations to become dependent upon them and to pay them tribute[83]: this without doubt was the way in which the Umbrians and Picentines came to be spared. Such cities too as were in positions difficult of access, like Ravenna, would no doubt purchase the privilege of living at peace.

One people after another poured down from the mountains, and marcht on through the midst of their comrades, who had already taken up their abodes, to regions not yet occupied. In this manner the Senones

1181 Cato, in Pliny, III. 24.

82 Livy, V. 34, 35.

83 Polybius, II. 18.

settled in Romagna. Here the subjugation of the Umbrians rendered them masters of the passes of the Apennines into southern Etruria, the northern frontier of which may perhaps have been too strong for them to force it. Thus they made their appearance before Clusium, thirty-thousand in number[1184], as an army, not as a wandering people. Their women and children had been left behind with their property on the coast of the Adriatic.

The senate sent envoys, not to the Gauls, nor as presumptuous mediators, but to ascertain who this host of foreiners were[85]. These envoys entering into the ranks of the Clusines, took part in an engagement; and one of them slew a chieftain of high rank[86]. The Gauls recognized the stranger, and sent a demand to Rome that he should be delivered up to them, as was fitting according to the law of the fecials. All attempts to appease them with gold were vain: they wanted blood. Even this sacrifice the senate resolved to make, in order that the guilt of an individual might not fall on the head of the whole nation. But he was the son of one of the military tribunes. His father appealed to the populus, to decide whether a member of a house should be condemned to death, and to such a death! and the curies, though they had never hitherto rescinded an ordinance of the senate, refused to give up the youth[87].

When the Gauls heard this, they sent word of it to their kinspeople, and being reinforced by great multitudes took the road to Rome, seventy-thousand in number. In the mean while the cohorts of the allies had been

[1184] This number and that given lower down rest, like the whole of the narrative henceforward, on the authority of Diodorus, XIV. 113, foll.

[85] Κατασκεψομένους.

[86] We ought no doubt to read ἱππάρχων for ἐπάρχων in Diodorus, XIV. 113.

[87] That the δῆμος here spoken of by Diodorus was the curies, is proved in note 367.

assembled[1188]; and every one who could bear arms was supplied with them[89]. It is clear that the whole of this force had taken up a position near Veii, to watch the enemy's motions, as was the case in 421, when an irruption of the same people was apprehended. For our narrative, the correctness of which even in its minute details will not admit of a doubt, relates that the Roman army crost the Tiber, and marcht along its bank to the Alia[90]: that is to say, the generals had received sudden intelligence that the enemy was advancing by forced marches upon the city, now utterly bereft of defenders, and that he was already close at hand[91]; and they hoped to prevent him from ravaging the country before it. If they had but refrained from indulging in such a hope! a battle lost under the walls of the city would not have been followed by its destruction.

It is evident that the Romans had not formed any camp on the Alia, but met the enemy on their march. Without having taken any precautions, without having provisioned the city and garrisoned it to stand a siege, they rusht into a battle, the loss of which would needs entail that of everything. Their conduct however did not proceed from any delusive assurance of victory[92].

[1188] Polybius, II. 18: *Μάχῃ νικήσαντες Ῥωμαίους καὶ τοὺς μετὰ τούτων παραταξαμένους.*

[89] *Ἅπαντας τοὺς ἐν ἡλικίᾳ καθώπλισαν*:—these included all up to the *γέροντες ἀφειμένοι*:—*ἐξελθόντες πανδημεί*: Diodorus, XIV. 114.

[90] *Διαβάντες τὸν Τίβεριν παρὰ τὸν ποταμὸν ἤγαγον τὴν δύναμιν.* XIV. 114. The direction of their flight toward Veii is also in favour of this assumption: they hoped to reach the bridge, but were intercepted.

[91] The haste made by the enemy is a strong proof that the Roman army lay on one side of the city. The victories gained by barbarians have often been decided by the generalship of their leaders, and by no means on all occasions by that fierce impetuosity which is usually regarded as their only source. Here too the legend assumes that the Gauls were urged onward by furious rage.

[92] Yet Livy at all events exaggerates their infatuated negligence. The Romans were not without a commander in chief.

When there is a difficult problem to be solved, and this can only be effected by a well-devised complicated plan, and by carrying this plan steadily into effect, with a due adaptation to the changes of circumstances, no man capable of framing and executing such a scheme will ever act with precipitation. The accomplishing an arduous work is a pleasure. But he who is not master of his task, will rush to a decision, and hurry it on even more than his adversary who is sure of victory; without any thing to rely on at best, save the possibility that courage, and perchance luck, may afford him some help; and often merely for the sake of bringing the matter to an issue: just as some unfortunate persons, when their minds have lost the power of acting, take refuge in death, to escape from the torments of anxiety.

The Roman army amounted to forty thousand men[1193]; the left wing[94] to four and twenty thousand[95]. It contained four Roman legions and consequently an equal number of troops of the line from the dependent states[96].

Q. Sulpicius has the melancholy distinction above his collegues, of being represented as such both in the battle (Gellius, v. 17), and at the ransoming of the city: a distinction of which his posterity may nevertheless have been vain. Nor did the military tribunes omit to consult the will of the gods by sacrifices before the battle: but it was done on an unlucky day, when, as was proved by this and similar events, the omens were delusive.

1193 Plutarch, Camill. c. 18.

94 Wings imply a body, or in a line of battle a centre; and this we very rarely meet with in the Roman wars. Unless the veterans marcht out, along with the double number of field-legions, as is supposed to have been the case in 309, each *cornu* was formed by half the army: and this word is an appropriate one; since horns meet at their roots. Still it is better to use a familiar expression, the inappropriateness of which may be explained away, than to venture on a novel one.

95 Diodorus, XIV. 114.

96 *Τέτταρα τάγματα ἐντελῆ.* Dionysius, Exc. 25. p. 28: consequently in round numbers, according to the system of those days, there were twelve thousand Romans: and the number of the allies (see note 1188) was just the same.

the right wing must have been formed by two legions of veterans, and three civic legions composed of proletarians and erarians[1197]. The Roman cavalry Fabius would have estimated at twelve hundred for the four legions; so that, if he did not take that of the allies into account, this was also included in the round number. The army seems to have had the Alia before it, an insignificant stream, which, in summer more especially, could only throw a few difficulties in the way of the cavalry by the slight elevation of its banks. The left wing rested on the Tiber, and was posted on the level plain. The troops on the right, most of them unused to service, were stationed on hilly and broken ground: but to effect this, the line of the field-legions was drawn out to a great length, and very much weakened. The Gauls however do not appear to have taken advantage of this to break through it. Brennus, who after all outflankt the Roman army, attackt the hills with a body of choice troops and a great superiority of force, and put his opponents to the rout in an instant. Of the Gallic cavalry nothing is said in our accounts. It is not to be doubted, however that it formed quite as large a part of the army as at Sentinum, or in the irruptions into Macedonia and Greece, and that it accelerated and decided the total defeat of the regular legions. Seeing themselves outflankt, and soon after surrounded, they were seized with a panic. Being cut off from Rome, they all fled toward the banks of the Tiber, in a vast tumultuous mass, which impeded its own flight. The Gauls rusht in upon them from every side; and the fugitives fell beneath their swords. The army did not save itself by flight, while it abandoned the city, as Livy, forgetting his own account, says, where

1197 The cohorts of the seniors contained half as many men as those which went into the field (see p. 122), and accordingly here formed two legions: the civic legions without doubt were reckoned like the rest, each at three thousand men: so that this lesser half was 15000 strong.

he is comparing Cannae with the Alia[1198]. Indeed flight here could not afford any safety. The javelins of the Gauls, hurled from the banks among the thick shoals of men who were trying to save themselves by swimming across the Tiber, slew a great multitude. Very few escaped with all their arms: most had thrown them away on the bank. Nevertheless a considerable body of fugitives had hid themselves in a wood between the river and the Salarian road[99]: and our notion of the extent of the slaughter is in some degree lessened, when we find two at least of the tribunes mentioned subsequently among the survivers. Those in the right wing, who, as the victor let them go, and turned his forces against the regular troops, were able to get away among the woody hights, may have reacht Rome by a circuitous road. The other soldiers who escaped assembled at Veii.

Some time was spent by the barbarians in plundering the bodies and collecting the bloody trophies of their victory: but ere nightfall, their horsemen were already seen on the Field of Mars and before the Colline gate. At that moment nothing could have prevented them from forcing it, and making themselves masters of all the defenseless inhabitants, and of the whole spoil of the city. But even if Brennus had tried to consummate his victory, as he had already decided it in the field, his commands would no longer have been obeyed. The Gauls, scattering themselves over the whole open country between the Alia and the city, abandoned themselves without any restraint to plundering, to drunkenness, and to all those atrocities which unruly and brutal multitudes are wont to perpetrate after storming a town, and sometimes after a defeat. In this disorder, the night, the

[1198] Livy, XXII. 50.

[99] Fest. Epit. Lucaria: the name of the festival which celebrated their escape into this skulking-place.

whole day of the seventeenth, and the following night past away[1200]. One part of the army was rioting, while others, overcome by the fatigue of the marches and of the battle, or by drunkenness, lay buried in sleep. Thus the attack on Rome was delayed, and the existence of the Roman nation was saved.

For in the meanwhile a plan had been formed within the city and had been carried into effect. To defend it was impossible. The fugitives from the right wing were returned without arms: those who had found safety in Veii were also stript of theirs: and how could they possibly have got into the city before the eyes of the victors, who were already beginning to cover the field of Mars? It was determined to garrison the Capitol and the citadel with the men most capable of defending them, and to supply these with all the provisions in the city, which the mass of the population would have consumed in a few days. Money too and costly articles were conveyed thither; while the persons who left Rome, and went about to the various places where they hoped to find hospitality and compassion, took whatever they could carry away with them. The objects of religious reverence were partly buried, partly transported to Caere. L. Albinius, a plebeian, who was driving his wife and children up the Janiculus, overtook the priests and Vestals, who were helping one another to bear away the most venerated of the sacred things: he made his family alight, and took in as many as his vehicle would hold. At

[1200] It is assuredly owing merely to a misunderstanding, that Diodorus fancied the Gauls waited for three days before they burst into the city: *post diem tertium* in Verrius (Gellius, v.17) is counted after the same manner as *ante diem:* and Livy, though he gets somewhat confused, was manifestly following an account which stated that the agony of terrour lasted two nights and a day. Compare v.39 and 41: *interposita nocte a contentione pugnae remiserant animos:—sine ira—ingressi postero die.*

Caere everything was scrupulously preserved: and after the evacuation of the city Albinius carried back what he had brought away[1201].

The determination to sacrifice the old men certainly cannot be called inconceivable in a people of antiquity. This however is inconceivable, that they should have been so far influenced by the example of the patricians, as to await their doom like devoted victims. Could they be sure that a wisht-for death would speedily release them? that wanton cruelty would not protract it by torture? that they should not be driven along as slaves, without regard to their strength, at the mere caprice of the barbarians? They might have defended the walls and the gates, might have maintained a resistance with all sorts of missiles in the interior of the city, might have made many of their enemies share their fate: had the quarters that held out been set fire to, the victor would have been deprived of his spoil. But in fact Livy is the only writer who speaks of this torpid resignation. Others related that, while all the rest of the people quitted their homes, eighty priests and aged patricians of the highest rank sat down in the Forum on their curule thrones in festal robes awaiting death[2].

[1201] In Diodorus, xv.51, Albinius, the military tribune of the year 376, whom Livy calls Marcus, is termed Lucius: if this be ever confirmed, it may then be regarded as almost certain that he was this pious man. For even the most distinguisht of the plebeians might be denominated *de plebe Romana homo*, just as the courteous expression *patriciae gentis* is made use of in speaking of the poisoners, just as well as of Manlius. The question would probably be decided, if the inscription taken from the Forum of Augustus in the Vatican gallery, which Borghesi has printed in the Giornale Arcadico, I. p.58, were preserved entire. So far as a portion of the lines is still extant, the lost part may be restored with certainty: *cum* | *Galli obsi*derent Capitolium, | *virgines* Vestales Caere deduxit: | *sacra at*que ritus sollemnes ne | *neglige*rentur curai sibi habuit; | *urbe recup*erata sacra et virgines | *Romam re*vexit.

[2] Zonaras, VII.23,—who alone gives the number; Plutarch,

That such a resolution should have been freely taken by men of the same class, who deemed it intolerable to outlive the republic and the worship of the gods, is by no means improbable; least of all if, after resolving to face death, they solemnly devoted themselves by the hands of the chief pontiff for the republic and for the destruction of her foes[1203]. On the other hand it is utterly inconceivable that the chief part of the women and children should not have retired from the city, where every kind of insult and outrage inevitably awaited them, when it was yet possible for them to be saved by flight. It is said that a great number prest forward at the last moment and gained admittance into the Capitol and the citadel: as if, had this been feasible, they would not all have forced their way in! and as if that small space could have held more than the men requisite to defend it, with provisions for them! Finally the story that the Romans in their despair did not close the gates of the city, and that nothing but the fear of some stratagem withheld the conquerors from marching in, sounds very incredible. On this point however we do not want any internal reasons; since the authentic account in Diodorus states that the Gauls, on finding the walls entirely deserted, burst open the gates.

It would be extremely unjust to impute what has here been said about Livy's narrative to a design of detracting from his merits. Such criticisms cannot impair his imperishable fame. As soon as we cease to call for what it was Livy's least care to supply, nothing remains to disturb the pleasure which his description must yield to every unprejudiced mind. If there be one so distempered as to forgo that pleasure, because his account has been proved to be historically untenable, we may pity, but we must not indulge its perverseness. A writer

Camill. c.21. According to Livy each sat in the portico of his house. [1203] Plutarch, Camill. c.21, and Livy.

who adopts a dry and neglected report, in preference to a well known and masterly narrative, must justify himself, and shew that it is not from the love of paradox, that he has discarded the more beautiful story. Those of my readers who have followed me thus far with interest, must by this time be sufficiently acquainted with me to believe that I was sincere in the opinion I exprest with regard to Livy in the first pages of this history. And in his own peculiar excellencies, in that richness and that warmth of colouring which many centuries after were the characteristics of the Venetian painters born under the same sky, he never shone more brilliantly than in this very description[1204]: a more vivid one is not to be found in any Latin or Greek historian.

When the Gauls had burst into the city through the Colline gate, they found it all desolate and deathlike. They were seized with that awe which comes upon a stranger, on passing in summer through a town in a high northern latitude at midnight, when all is clear as day, yet no mark of life is to be seen in the streets. Every house was closed. They marcht on till they came to the Forum. Here they saw the armed men above in the citadel; and in the Comitium the aged chiefs of the

[1204] He fancied that the flower of the remaining Romans were shut up in the citadel; that their property and the objects of their affection were in the town, and in the power of a ruthless enemy; that every one fixt his eyes on his own dwelling, and felt his heart torn when flames burst forth, or the cry of anguish seemed to rise from it. The picture which Livy's imagination created, Cellini saw from the castle of St. Angelo, when Rome was stormed by the constable Bourbon; for on that occasion the town was taken quite unexpectedly. The two descriptions remind one of each other: but Livy's was a dream. Nobody assuredly had staid behind in Rome, except dishonest slaves, and rascally vagabonds of all sorts, who hoped, each in his own way, to gain the confidence of the forein soldiers, to live with them, and to make money by them; and who may have guided them to places where they might find buried treasures, or have sold what they had stolen to them.

senate, looking like beings of another world. In doubt whether the gods were not come down to save Rome, or to avenge it, a Gaul went up to one of the priests[1205], M. Papirius, and stroakt his white beard. The old man indignantly struck him on the head with his ivory sceptre. The barbarian cut him down, and all were massacred. Hereupon the plundering commenced throughout the whole range of the city; and ere long fire broke out in several quarters. Day after day, so long as any concealed property was to be found, these scenes were renewed. The conflagrations became more numerous and spread widelier: and with the exception of a few houses on the Palatine[6], which the chiefs ordered to be kept for their own residence, the whole city was burnt to the ground.

In the Capitol and the citadel there was a body of about a thousand armed men[7]; among whom were the surviving military tribunes, and the younger part of the senators. The place was by no means impregnable. Appius Herdonius had been overpowered in it by the Romans. The Gauls rusht repeatedly up the *clivus* to storm it, but met with such desperate resistance that they were repulst. This led them to trust to famine; for that the garrison should ever be relieved was out of the question. But as the Romans held out perseveringly, being supplied with water from the well in the Tarpeian rock, which remains to this day a contemporary memorial of the siege[8], and having food enough for so small a number just to subsist on, the ferocious devastations of the Gauls became their own punishment. They began

[1205] This is what he must have been; for his name does not occur in the Fasti.

[6] Diodorus, XIV. 115.

[7] Florus, I. 13. Satis constat vix mille hominum fuisse.

[8] See Vol. I. p. 230. The mouth is not covered over now; hence the water is too foul to be used. It probably comes from the Tiber.

to suffer great distress on the scenes of their ravages. First the dog-days, and then the month of September, which at Rome has always been no less pestiferous than at this day, brought on fevers, which swept away the foreiners by thousands; just as the emperor Frederic's northern troops perisht under the walls of the city in the same month. The spot where the bodies were burnt retained the name of the Gallic Piles[1209] so long as ancient Rome existed.

When the booty was exhausted, the chief part of the Gauls seem to have marcht on further, as far as Apulia[10]. But even those who staid behind would soon have been forced to decamp, unless they had got provisions from Latium by levying contributions or by foraging. Many places, which are never mentioned again, may perhaps have been destroyed at this juncture. As Ardea lay so near, nothing can sound more probable than that Camillus, if he was living there as an *inquilinus*, should have led the Ardeates, emboldened by his great name, against the plunderers, and have defeated them. Nevertheless this story, which cannot have found a place in the Annals, any more than the distress suffered by the other Latin towns, may be a mere fiction belonging to the legend. We must assume, unaccountable as it may seem, that, the bridge having been broken down, the right bank of the river was secure from the invaders. Of the men who had escaped from the battle, or had fled from Rome,

[1209] The *Busta Gallica*, not far from the Carinae. It is a very plausible notion of the Roman topographers, that this name has been corrupted into *Portogallo*, and that the church of S. Andrea is situate on the same spot. Another account states that the Romans burnt the bodies of the Gauls there, after the evacuation of the city.

[10] Diodorus, XIV. 117, says that after the evacuation of the city the Gauls, who were on their way back from Apulia, were cut to pieces by the Caerites. This expedition into the south of Italy took them into the neighbourhood of Dionysius; and a part of them entered into his service: Justin, XX. 5.

many were collected at Veii. But they wanted arms and a leader. As such they chose M. Caedicius, a man worthy to be named among the generals to whom Rome was the most indebted. He led his followers against the neighbouring Etruscans[1211], who, encouraged by the weakness of the Romans, had marcht out and were plundering the Veientine territory, where the Roman husbandmen had taken refuge with the wreck of their property. He surprised and routed these ungenerous foes, rescued their captives, retook their plunder, and equipt such of his own men as were without arms with those of the prisoners and fugitives. These good tidings, which were an encouragement to hold out by affording a hope of relief, were conveyed to the garrison in the Capitol by a daring youth, named Pontius Cominius[12], who swam down the Tiber, leapt ashore near the Capitol, and without being discovered made his way through the enemy's posts to the top of the hill and back again.

The next morning some Gauls observed that, on the side of the hill under Ara Celi[13], a bush growing in a crevice, by which the bold adventurer had taken hold, was torn up, and that some tufts of grass had been trodden down by footsteps. This shewed that it was possible to climb the hill here. At the hour of midnight they came to the spot in dead silence. A Gaul had already reacht the summit of the rock, unnoticed by the sentinels

[1211] Probably the Tarquinians: the Vulsinians had concluded a truce.

[12] *Pontius* belongs to that class of names, which among the Romans were forenames, among the Oscans gentile names: in others, such as *Pacuvius*, *Marius*, the converse was the case. *Cominus* has been introduced into the manuscripts of Livy and Frontinus by some ancient emender, who took offense at the combination of what lookt like two gentile names: see Oudendorp on Frontinus, Strat. III. 13. 1.

[13] By the Porta Carmentalis. So that there was no wall at that time on this side of the hill; and the discovery that it could be scaled was what led to the building of one after the restoration of the city.

and the dogs, when the cries of the geese, which, in spite of the gnawings of hunger, had been spared as sacred to Juno, awoke M. Manlius, a consular, whose house stood on the top of the hill[1214]. The Romans always lookt upon him and Camillus as the heroes of that age: and in later times at least it was said that this night was not the only occasion on which he saved Rome; for that it was by his counsel, and under his command, that the ablebodied men occupied the Capitol[15]. He thrust down the Gaul who had clambered up; and his fall bore down those who were mounting after him: thus the scheme was baffled. The negligent captain who had been on guard was thrown with his hands bound down the hill[16]. Every man in the citadel in gratitude to its preserver brought him half a pound of corn and a quarter of a flask of wine, the most precious of all gifts in a famine.

This had reacht such a highth that the besieged had begun to eat the leather of their shields and the soles of their shoes[17], when the Gauls gave ear to an offer of a sum of money as the price of their evacuating the city. So long as they hoped by perseverance to gain possession of all the treasures in the Capitol, as well as of captives of rank, who would have been ransomed by such of their relations as had made their escape, or by their friends in other cities, they had scorned every proposal calling on them to be satisfied with a part. But their host was melting away: they received intelligence that the Venetians, taking advantage of the absence of their fighting men, had invaded their territory: and if Brennus had sent a portion of his troops back to the Po,

[1214] Hence the name *Capitolinus*, which had already existed in his family. Victor, de vir. ill. 24, says that a house was built for him there at the public expense.

[15] Victor, de vir. ill. 23, 24; and Florus, I. 13. 13, 15, who looks upon him as the commander during the siege.

[16] Dionysius, Exc. 22. p. 24.

[17] Servius, on Aen. VIII. 652.

the forces collected at Veii might easily have relieved the city. As the Moors in the Spanish ballad, when the knight, after a seven years siege, threw the only loaf left in his castle at them, abandoned their undertaking, and decampt; so the Roman lays fabled that Jupiter in a vision prompted the distrest garrison to bake their whole stock of flour into bread, and to pelt the loaves like stones at the besiegers; that they obeyed his behest; and that the Gauls were thus led to believe that their enemies were rolling in abundance[1218]. It was agreed that they should receive a thousand pounds of gold to quit Rome and its territory. At the weighing of the gold, the Gallic chief had false weights brought; and, when Q. Sulpicius exclaimed against this injustice, he threw his sword and belt also into the scale. Hence the words, *Wo to the vanquisht*[19]*!* were held in remembrance.

The time during which the city remained in the hands of the barbarians, is variously stated at six, seven, and eight months[20].

1218 Ovid, Fast. VI. 350. foll. Florus, I. 13. 16. Suidas on ὑπερμαζᾶ, quoted by Mai.

19 Dionysius, Exc. 23. p. 24, 25, instead of 1000 pounds makes the sum 25 talents: which, as without doubt he meant Attic ones, amount to 1500 pounds. In the course of the narrative, he further adds that through the dishonesty of the Gauls a third of the weight was deficient, and that the Romans had a respite allowed them to make it up: 1500 and a third of 1500 would come to 2000 pounds, which was stated by some as the amount of the ransom (see note 1227) Now if Dionysius supposed that this deficit was never paid, and concurred in Varro's opinion that the gold which was walled up comprised other money beside the ransom, by so doing he kept clear of the contradiction of which I shall speak lower down.

20 Six months, according to Varro, in Nonius, IX. 6 (genit. pro abl.), and Florus, I. 13. 15: Servius, on Aen. VIII. 652, says eight: Polybius, II. 22, and Plutarch, Camill. c. 34, come between the two with seven. This number would be clearly right, if the period at which the evacuation is stated to have taken place, the middle of February, were well authenticated: if so however, Varro must have

When Polybius wrote that the Gauls, after giving up the city as an act of grace, returned home with their booty, without harm or loss[1221], he assuredly did not use these words with a set purpose of contradicting the story that the treasure was wrested from them and their whole army destroyed; a story like that invented by the Greeks, in their very dryest historical age, of the miraculous punishment of the Gauls for their expedition against Delphi. Yet it certainly was not after he wrote, that this story was first fabricated. On the contrary it had probably grown up as a part of the legend of Camillus, and become current in the mouth of the people, before the time when Rome retaliated with an overflowing measure of vengeance upon the Senones. That legend related, with such an adaptation to the circumstances of ancient times as to shew clearly how early it must have sprung up, that the Romans who were assembled at Veii past an ordinance of the plebs restoring Camillus to his civil rights, and appointing him dictator. To give this act the authority of law, the assent of the senate and curies was requisite[22]: and Camillus, when Caedicius came to him, refused to undertake the charge committed to him, until that assent should be procured. For this purpose was Cominius sent to the Capitol[23]. At Veii Camillus found

known it, and in that case could never have adopted a wrong number of months. It is one of those puzzles which are for ever coming across us in historical fragments, that the words cited from Varro run thus: *ut noster exercitus ita sit fugatus ut Galli Romae* Capitolii *sint potiti.*

[1221] Polybius, II. 22. Ἐθελοντὶ καὶ μετὰ χάριτος παραδόντες τὴν πόλιν, ἄθραυστοι καὶ ἀσινεῖς, ἔχοντες τὴν ὠφέλειαν, εἰς τὴν οἰκείαν ἐπανῆλθον.

[22] See p. 364.

[23] Diodorus is the only writer who represents Cominius as sent to report the plan of the Romans assembled at Veii. Among the others, who all connect his bold feat with Camillus, Frontinus (III. 13, 15) differs from the rest in reversing his mission, and making the senate send him from the Capitol to Camillus, who is already at Veii, whence Cominius returns with his consolatory answer.

twenty thousand Romans; and a number of volunteers from Latium gathered round his standard. With these troops he advanced toward the city. Q. Sulpicius had just begun to weigh out the gold to the Gallic king, when the dictator with his army marcht through the gate, and hastened to the Forum. The gods would not allow that Rome should buy her existence. Camillus arrived before the gold was delivered, and canceled the compact concluded without his consent. Brennus exclaimed indignantly at this breach of faith. Meanwhile the legions had followed their general; and a combat ensued in which the Gauls were driven out of the city. A second battle fought on the road to Gabii, where they had mustered their forces, avenged Rome completely: not a man escaped to carry away the tidings of the defeat. Brennus was taken prisoner. He complained of the violations of the treaty: but the dictator retorted the words, *Wo to the vanquisht*[1224]*!* and ordered him to be put to death. After this victory Camillus entered Rome in triumph.

Among the fictions attacht to Roman history, this is the first that was rejected, with the exception of those the fabulousness of which became manifest along with that of the ancient religion. In the sixteenth century, when France was the country in which philology, then in its youthful vigour, was in the most flourishing condition, the national feelings of the French took offense at this tale: and the same feelings first led Beaufort to his critical examination of Roman history, which has finally settled the point. It would be superfluous to repeat his arguments. Should any one, amid future vicissitudes of fashion, ever attempt to revive the old delusion, they will be still extant to refute him. I will merely add, what Beaufort, who did not suspect, any more than others, how important the narrative of Diodorus

1224 Festus, Vae victis. Here Ap. Claudius is mentioned instead of Q. Sulpicius, as the person who had to hear the insolent speech.

is, has not noticed, that this historian does not say a word even about the appointment of Camillus to the dictatorship, much less about his having liberated Rome by arms: so that this, like the other touches in the legend, which I have already pointed out and shall point out presently, is without doubt no less destitute of historical truth than the journey of the Burgundian king in the Niebelungen to the court of Attila.

The twofold battle seems to be at variance with the character of poetical tradition. I conjecture that the oldest legend confined itself to making Camillus prevent the payment of the gold and drive the Gauls out of the city; and that the battle on the Gabine road originally belonged to a different form of the story, and was merely inserted from the usual practice of accumulating several narratives of the same event. The nobler feeling, in which Livy partook, could not brook the thought that a ransom for Rome's existence should ever have been paid: a less delicate one was willing to admit that the Gauls had set off with the gold, but invented a way in which it was subsequently recovered. The fiction being a bold one, arbitrary variations were made in the details. The lastmentioned story placed the battle, I conceive, on that part of the Gabine road, which may have been the scene of the victory gained by C. Sulpicius, or by M. Popillius, about the end of the century: another placed it before Vulsinii, and some time after the evacuation of the city. Camillus, it related, marcht to relieve that town, and found the gold that had been carried off from Rome, along with almost all the rest of the booty, in the camp of the Gauls[1225].

[1225] Diodorus, XIV.117. I read *Οὐολσίνιον* instead of *Οὐεάσκιον*. But does the mention of the ransom come from Diodorus himself? or is it an interpolation? The words on which the point turns are: *τῆς ἀποσκευῆς πάσης ἐκυρίευσεν, ἐν ᾗ καὶ τὸ χρυσίον ἦν ὃ εἰλήφεισαν εἰς Ῥώμην.* Is it credible that any Greek man of letters under Augustus should have written these words?

That the gold was retaken, was held to be clearly demonstrated by the fact, supposed to be perfectly certain, that the two thousand pounds of gold, of which M. Crassus robbed the temple in the year 691, had been lying till then walled up under Jupiter's throne in the Capitol, ever since it had been wrested from the Gauls and consecrated there by Camillus[1226]. That this sum included the gold paid for the ransom of the city, nobody doubted. The general notion was, that the Gauls had received two thousand pounds, and had been deprived of them. Others held that, though the ransom had only amounted to half that sum, the other half had likewise been taken from the Gauls, consisting partly of plunder, especially that from the temples, partly of their collars and other ornaments[27]. There is a very simple way of accounting for the origin of this treasure, an explanation no less obvious to us than it was to the Roman antiquaries, who unaccountably seem to have overlookt it. The sacred gold deposited in the Capitol would naturally be employed to satisfy the enemy, under a vow to pay back double the sum. A tribute is said to have been imposed in order to raise the ransom[28]. During the distress of the war this could never have been levied: but it might afterward, for the sake of repaying the money borrowed from the temples with interest. The

[1226] Pliny, XXXIII. 5.

[27] Among the writers guilty of the mistake which Pliny corrects is Varro, de vita pop. R. in Nonius, III. 45 (I. p. 243. ed. Bip.) *Auri pondo duo millia acceperant ex aedibus sacris et matronarum ornamentis a quibus* (read *aureis:* the combining two clauses without a conjunction is agreeable to Varro's usage): *postea id aurum et torques aureae multae relatae Romam atque consecratae.* The military ornaments, which according to Pliny raised the weight to 2000 pounds, he adds to that sum; just as in some exaggerated accounts the whole amount of the booty taken at Pometia was described as merely a tenth part of it: see Vol. I. pp. 512, 513.

[28] Livy, VI. 14. Cum conferendum ad redimendam a Gallis civitatem aurum fuerit, tributo collationem factam.

silence of such narratives as those with which we are forced to content ourselves, is not indeed a sufficient reason for asserting that there cannot have been a truce, previous to the delivery of the gold, during which the besieged might hold communication with the fugitives, and the matrons might give up their trinkets for the service of their country. But that there should have been time enough to obtain a contribution from the Massilians, after the period when there was ground for supposing that the Gauls might be bought off, is certainly quite incredible. Yet assuredly the highest attention is due to the story told in the Massilian chronicles, that on hearing the news of Rome's disaster all Massilia put on mourning, and that gold and silver was collected and sent to Rome, to satisfy the Gauls; in return for which generosity Massilia was rewarded with isopolity, an exemption from taxes, and precedence[1229]. I think this may be reconciled with the other circumstances of the case, if we suppose that, as other nations of antiquity after any overwhelming calamity were not ashamed to solicit presents from their friends[30], the Romans at all events did not scruple to accept them when offered, in order to have the means of replacing what they had borrowed from the gods.

There remains yet one more tradition, which seems to breathe the sentiment, that it was enough if the Gauls were prevented from carrying the prize of their victory home. This also bears witness against the Roman fable. Strabo relates, that the Caerites defeated the Gauls on their way home in the land of the Sabines, and spoiled them of the treasure which they had received from the Romans[31]. This seems to be merely an amplification of

[1229] See note 149.

[30] The Delphians after the burning of the temple; and in much later times the Rhodians after the earthquake.

[31] Strabo, v. p. 220. b.

a fact which actually took place. At least we are also told by Diodorus, that the Celts on their return from Apulia were attackt in the night by the Caerites on the Trausian plain in the Roman territory, and were all cut to pieces[1232].

[1232] Diodorus, XIV. 117. He probably wrote Καίριοι, not Κέριοι: here he had a Roman author before him; for in other passages he calls them Ἀγυλλαῖοι.

ON THE OLYMPIAD AND YEAR OF THE TAKING OF ROME.

The advance of the Celts so near to the southern coasts of Italy attracted the attention of the Greeks, even on the other side of the Ionian sea, to their migration: and among the many cities which must have fallen before their attack, Rome may probably have been the most powerful and renowned. Its name indeed had not continued down to this time altogether unknown in Greece. It was mentioned in the legends which pursued the destinies of the Trojans after the fall of Troy: and Hecataeus, who spoke of Nola in his Europe[1233], cannot possibly have past over Rome, which was still flourishing in glory under its monarchy, when he reacht the maturity of manhood. But the wars it had been carrying on during the hundred and twenty years after the banishment of the Tarquins, against tribes utterly unknown and regarded as barbarians, could not possibly engage the attention of the Greeks. Still less could Greek writers be led to speak of them: and as the books of Hecataeus sank into complete oblivion, after Eratosthenes publisht his treatise on geography, we may thus understand how the mention of the capture of Rome by the Gauls should be regarded as the earliest notice of any acquaintance with her fortunes among the Greeks. It is a pity that Plutarch affords us no kind of hint of the way in which

[1233] Stephanus Byz. on the word.

Heraclides introduced that event in his treatise on the soul. With regard to Theopompus, who did not give any account of it, but merely mentioned it[1234], we may confidently assume that he spoke of it in one of the many copious episodes of his great work, and on occasion of the movements of the Gauls on the middle Danube. It cannot have found a place in the course of his continuous narrative: for it occurred during the period, not included in his history, between the seafight off Cnidus and the accession of Philip.

On the other hand we may affirm with equal confidence that it cannot have been past over by Timaeus, who paid so much attention to the history of Rome as even to discuss its antiquities and its Trojan origin, and who wrote that of Italy and Sicily in the form of annals. Chronology was a subject to which he attacht great importance. He was the first historian who arranged events according to the years of Olympiads and to archonships; and he must assuredly have fixt the date of the taking of Rome according to both these methods. It is impossible to entertain the slightest doubt that he was the author of the statement, that the expedition of the Celts in which Rome was taken fell in the archonship of Pyrgion, Ol. 98. 1: and when Dionysius says that on this point almost all were agreed[35], he must refer to Eratosthenes and Apollodorus, whose chronological tables had gained an unlimited authority. Timaeus is the writer whom Diodorus follows throughout his work; and since the latter, in connecting his account of the capture of the city, which is manifestly taken from a Roman writer, with that of the war of Dionysius in the south of Italy, says that about the time when the Syracusan tyrant was besieging Rhegium the Celts came over the Alps, it

[1234] Pliny, III. 9. Theopompus, ante quem nemo mentionem habuit, urbem duntaxat a Gallis captam dixit.

[35] Dionysius, I. 74.

seems hardly to be questioned that, however much or little Timaeus may have related concerning their coming, he combined it with the same epoch. Their descent into Lombardy, the date of which was no less likely to be preserved in remembrance than the day on which the Alemans and Burgundians burst into Gaul, or the Lombards into Italy, to conquer regions which they were never to quit again, was a point satisfactorily fixt. According to Timaeus it immediately preceded their appearance before Rome. The words of Dionysius just referred to,—and he was always very careful in the choice of them,—speak of the expedition of the Celts, and mention the taking of Rome as only one of the events belonging to it[1236]. Though Polybius and Diodorus himself place the capture under the second year of the same Olympiad, even the former from all appearance had no other reason for doing so, save that he thought it self-evident there must have been some interval between the two events.

The abovementioned statement of the Greek chronologers was regarded by the writers who undertook to settle the comparative chronology of Roman and Greek history, as an incontrovertible basis for their calculations. The Olympic year in which the Celts crost the Alps, they knew as well as if it had fallen within their own memory. We know from direct testimony, even without any calculations, how the years of Rome and of the Fasti corresponded with the Greek Tables, after the expedition of Pyrrhus into Italy. This took place in the year 472 according to Cato, and a year before the march of the Gauls against Delphi, that is, in Ol. 124. 4. Now supposing that their kinspeople had taken Rome in Ol. 98. 1, 107 years before, the Fasti must at least have furnisht 106 magistracies. One, no doubt, might be lost; for, the commencement of the official years being frequently postponed by interreigns, a certain number of them would

1236 Ἡ Κελτῶν ἔφοδος, καθ' ἣν ἡ πόλις ἑάλω.

of course occupy a longer time than the same number of solar years: but the triumphal Fasti shew decisively that this excess amounted merely to six months in the course of half a century. Livy however during the above-mentioned interval has only 17 years of military tribunes, 5 in which the republic was without any curule magistracy, and 82 consulships, that is, 104 in all. The year lost in interreigns he has tacitly inserted in the period anterior to the Licinian laws, which he makes 23 years, instead of 22[1237]: in opposition to which Pighius, on grounds utterly untenable, has filled up the gap by inventing a pair of consuls for what according to Cato is the year 421[38]. It is a mistake therefore to suppose that Livy follows Cato's chronology later than the beginning of the fifth century at the furthest. The continuance of this errour, after Sigonius had irrefragably proved that Livy does actually place the beginning of the first Punic war in 486, not in 488, that of the Macedonian war in 550, not in 552[39], is a melancholy instance how little chance

[1237] He reckons the year, which according to him is U. C. 400, according to Cato 399, as the 35th from the taking of the city, and *ablato post undecimum annum a plebe consulatu:* VII. 18.

[38] I am ready to grant him that the Capitoline Fasti about this time must have had a year more than Livy's: it must however have been one of the fictitious annual dictatorships. I am extremely loth to question the honesty of any man of letters: but Pighius was not scrupulous about truth; and in this instance he cannot possibly have been so with regard to the two consuls whom he has brought forward out of Solinus (c. 35): he must needs have seen that Solinus was adopting the same erroneous view, which we find in Livy, VIII. 24; nay perhaps was copying him.

[39] The former, in XXXI. 4; the latter, in XXXI. 1, as the passage has been beautifully emended by Sigonius. The treatise of this scholar on the chronology of Livy (Drakenborch, VII. pp. 82-92) is admirable throughout; for though several points of detail may now be made out more correctly, this does not affect its merit. His hostility toward Glareanus, like similar conduct in other philologers, may be useful to us as a warning, but must not be allowed to detract from the value of his discoveries.

an inquiry, however perfect, in which readers must take an interest before its results can become generally current, has of prevailing over that love of ease which clings to establisht opinions. The year 472 in Cato answers to 470 in Livy: and the year 365, in which, according to both tables, it is expressly stated that Rome was taken, answers, not to Ol. 98. 1, but to Ol. 98. 3. To make up the difference, and complete the number of 106 years, two official years were interpolated, the dictatorship of Papirius Cursor during the year 430, and the consulship of 439, both of which are unknown to Livy. Neither of them can find a place in a narrative which relates the events of each year apart: and their nullity is put out of all doubt by the precise statement given in another place with regard to the length of the second Samnite war.

But although we concur with Livy who leaves them out, yet here, as on many other occasions, we find reason to remark that, since he goes only half way, the writers who adopted those official years rejected by history, were at all events more consistent. For the anarchy which he conceives to have lasted five consecutive years, does not stand on any better ground. This too is a mere fabrication, devised to reconcile the Roman Fasti with the assumption that the capture of the city took place in Ol. 98. 1. That a state of anarchy should have lasted so long is an absolute impossibility. Even the administration of justice, and of civil affairs, which in times of tranquillity might be carried on for a while by interrexes, must very soon have come to a stand amid the excitement which such a state of things implies. At other periods the necessity of a permanent supreme magistracy was so strongly felt, that, when there had been a succession of interreigns for some weeks, one party or other always gave way, in order that some sort of election might be held: and are we to suppose that they now defied each other so inflexibly for several years together? or

that they could do so without bringing utter ruin on the state? Would the neighbouring nations have allowed Rome to enjoy a term of peace like that in the days of Numa? That such a state of things should have lasted a single year is quite inconceivable. Can the tribunes have shewn such unprecedented obstinacy at the outset of the contest, and yet in its further progress, when the excitement increast so as to threaten the most fearful extremities, when even the authority of the dictatorship was disregarded, have allowed the elections to proceed quietly? Their resistance would inevitably be renewed every year, as long as the dispute about the bills continued, but would always be withdrawn sooner or later, when the necessity of having a supreme magistracy could no longer be put off. Thus, during the term of these commotions, twelve months, or even more on the whole, may have past away in interreigns: and as the military tribunes who came into office after such interruptions, governed the republic for a whole year, no less than those who were elected in a regular way, it was necessary, in order to keep the Fasti in harmony with the Capitoline era, that one year should be left without the names of any magistrates. The fittest place for introducing this was when the tribunes first assert their right of stopping the elections[1240]. But since even after this insertion the capture of the city fell in Ol. 99. 1, instead of 98. 1, it was regarded as clear that the four years which were wanting must have been left out

[1240] The place assigned to it being arbitrary, the entire year of anarchy is put by Diodorus in U. C. 380, whereas Livy makes it commence in 379. That more however than a single one past in this way, is intimated by the former under Ol. 102. 4, where he says that at first there was anarchy, then the consular tribunate of L. Aemilius and his collegues. His deviating from Livy during this period so full of confusion, by giving a list of a whole college which does not occur in Livy, while on the other hand he omits one of Livy's lists, does not affect the general chronology of the times.

somewhere or other in the Fasti. This suggested the notion that the chronicles were mistaken in stating that five years of the Fasti had been separated by long interreigns, and that instead of this an equal number of years, including the term of those interreigns, had past altogether without any magistrates:—a conjecture just as wide of the mark as almost every other with which the learned Romans in the seventh and eighth century fancied they were solving historical difficulties.

Of this errour even Cato cannot be acquitted. Yet there were Fasti which had not been corrupted. Such were those followed by Fabius, who, writing for Greek readers, must have paid regard to the chronology of the Olympiads; and who is one of the writers alluded to by Dionysius as forming exceptions to the general unanimity with respect to the date of the capture of Rome. He had placed it in Ol. 99. 3, under which year the military tribunes of 365 occur for a second time in Diodorus. For this historian, after concluding his twelfth book with the year 331, which with him is Ol. 91. 1, with unparalleled recklessness passes over the Roman magistrates of the next five years, and begins his next book with those of 337, placing them in Ol. 91. 2, for the sake of bringing the capture of the city to Ol. 98. 2, the year assigned by Polybius: this is the plan according to which he wrote his thirteenth and fourteenth books. Having done this, however, he found that the Fasti which lay before him would not suit him, because they did not contain any interpolated years: so he tried to get out of the scrape in his fifteenth book by an act of clumsy impudence, repeating the magistrates who had already occurred from 361 to 365, under the years from Ol. 98. 3 to 99. 3[1241]. That Fabius was the author whom

[1241] This repetition, a trace of which had been discerned by Wesseling (on xv. 14), has been fully detailed by Borghesi in a dissertation which L. Dindorf has most deservedly subjoined to the preface

he followed in his comparative chronology, with the exception of those two books, is not only probable, inasmuch as Fabius is the source from which he derives his account of Roman affairs, and as the difference of an Olympiad, observable throughout his eleventh book between his comparative chronology and that of Dionysius, is the very difference which existed between Fabius and Dionysius with regard to the year of the foundation of the city[1242]: but we may pretty safely venture to believe that we have express testimony asserting that Fabius reckoned the year of the first plebeian consulship, exactly as Diodorus does, to be the eighteenth after the taking of the city.

The grammarian in Aulus Gellius, who maintained that the manuscript of Fabius, where this year was reckoned as the two-and-twentieth, was incorrect, and that it ought to have been the eighteenth,—*duodevicesimo* instead of *duoetvicesimo*[43],—can only have meant to say that the number was wrong on historical grounds: he must have met with the right reading in some other copy. From the time that the notion of grammar was determined by the example of the Alexandrians, the interpretation and criticism of ancient authors by the help both of history and mythology was held to be a main office of a grammarian. Had the person referred to objected to *duoetvicesimo* as

to the second volume of his Diodorus, p. XII. foll. I have here to acknowledge that I only know the new fragments of the Fasti from Fea's edition of them, and that I neglected to procure Borghesi's admirable work while I was in Italy, because from the wretched state of the book trade there it is always a difficult matter at Rome to procure a copy of any book publisht in Lombardy: and not till many years after did I discover that my own researches might derive assistance from those fragments, those researches having hitherto been pursued without any archeological examination of the Fasti. Consequently I do not know whether that great antiquary has explained the singular repetition, as well as pointed it out.

[1242] Ol. 7. 1, and Ol. 8. 1. See Vol. I. p. 268.

[43] Primum ex plebe alter consul factus est duoetvicesimo anno postquam Romam Galli ceperunt. V. 4.

bad Latin, Gellius would have spoken very improperly in terming him a man eminent in his science. He would have been refuted just as easily as every reader of the passage, who imagines that the discussion turns merely on the word, must suppose him to have been. This harsh opinion he brought upon himself, by yielding to the delusive temptation of leading his hearers to fancy that they should catch him in a palpable blunder, and to assail him with the utmost confidence in a position which he had not taken up. Modern critics have all pronounced him equally ignorant of history and of language; and perhaps without any fault on the part of Gellius: for the conclusion of the chapter, which is lost, may very likely have contained the grammarian's defense of himself, and the confusion, or at least the vexation, of his overhasty censurers. It is true, the copy of the Annals of Fabius, in which the disputed passage occurred, must have been in Latin. Other fragments however have been preserved, belonging not to his Greek work, which was so generally read, and which Diodorus made use of, but to a Latin one[1244]; which cannot be ascribed to any other Fabius, for instance to Servilianus, Pictor being expressly named as its author. Hence it is most probable that there was a Latin translation of the Greek history of Q. Fabius; just as Claudius rendered the Annals of Acilius in their common mother tongue.

The same chronology is the basis of the dates given by Orosius during the period from the passing of the Licinian law down to the first Punic war; though the difference between these dates and those of the ordinary statements, being regarded as the blundering of a careless and ignorant writer of a late age, has been deemed unworthy of attention: else it must have been seen from their consistency that they belonged to a peculiar set

[1244] This appears from any collection of his fragments: see that at the end of Corte's Sallust

of Fasti[1245]. Of these dates only two refer to the fourth century, 384 and 388, which answer to 390 and 394 in Livy: and while there is here a difference of six years, its average during the following century amounts to five[46]: that is to say, the year which Livy inserted before the throwing open of the consulship, must have been added in these Fasti soon after it. Hence the difference as to the time of the first plebeian consulship is in reality only five years, or, properly speaking, four: for Orosius places the capture of the city in 364, instead of 365. From this period down to the first plebeian consulship he has exactly the same number of years as Diodorus: so that these Fasti also allow only one year of anarchy, and bring down the capture in like manner to Ol. 99. 3. Now if we apply this correction to the epochs mentioned above, which Livy's calculation makes two years earlier than Cato's, we shall have to date the beginning of the first Punic war in 482, instead of 486, that of the Macedonian war in 546 instead of 550: and the year of the city in which the christian era, as settled by chronologers, begins, the year 754 according to Varro's table, when the years erroneously interpolated are expunged, becomes 746. It is certainly disagreeable to be compelled to depart in this manner from a system universally adopted and familar to every one. I myself, when I think of Cicero's consulship or Caesar's death, always connect them with the received dates according to the erroneous tables: and it is only when I fix my attention on the point, that

[1245] The deviations which have evidently arisen from errours of the scribes, are no objection to the correctness of this conclusion.

[46] 384 (390 Liv.) Orosius, III. 4. 388 (394) 6. 402 (408) 7. 409 (414) 9. 426 (432) 15. 450 (455) 21. 464 (469) IV. 1. 475 (479) 3. 480 (485) 5. The number 483, in IV. 7, is probably a mistake for 481. Here, at the beginning of the first Punic war, his dates stop, till the beginning of the second, when he goes over, and assuredly without observing the gap, to the era of the Capitoline Fasti, which he subsequently adheres to.

I place them in the years 683 and 702. Others, who will experience the same difficulty and the same annoyance, without the satisfaction of having themselves discovered the truth, will probably give way to a feeling of impatience too natural to be blamed. It is only by afterages that unmixt advantage can be derived from the removal of this as of other rooted errours, when the form to which Roman history in its full extent will have been restored shall be universally adopted, and the old illusions entirely forgotten. Nevertheless the writer of a continuous history, who, if the two interpolated years were to be retained, would have to prolong the second Samnite war, though its duration is perfectly well known, just so much beyond the truth, and yet at the same time would have to jump over those years, as if, while the rest were filled with vigorous military enterprises, they had past away in a state of wintry torpour, cannot possibly admit them into his chronology, any more than Livy has done so in the place where he points his attention to that subject. This step however being unavoidable, it would have been a mark of inconsistency and weakness to have stopt short at it, and not to have likewise struck out the years of the imaginary anarchy, a thing absurd in itself, and which the sequel of this history will prove to be inadmissible.

If it be allowed that Rome was taken in Ol. 99. 3, Ol. 98. 1,—the date of the war before Rhegium, and of the descent of the Gauls into Italy,—answers to 359, the year of the taking of Veii: and this agrees perfectly with the statement about the fall of Melpum, and the reasons which prevented the Etruscans from sending succour to the Veientines.

It is hardly fair that the view of this subject, which in itself is the oldest and simplest, should have to justify and defend itself against an artificial fiction, which has accidentally become predominant. But this is one of the cases in which we must bear with the course of the

world, and try to overcome the obstacles it presents. I will not shrink therefore from the task of confirming my proposition by other arguments derived from a comparison of Greek and Roman chronology, so far as Roman history supplies such.

The coincidence of the year 363 with Ol. 99. 1, the year in which Dionysius took Pyrgi, furnishes an explanation of the otherwise unprecedented ordinance which forced the two consuls to abdicate[1247].

During the dearth in the year 344 the Romans received relief from the Sicilian princes[48]. The plural number in this statement need not detain us. Although there were several persons who held princely sway in the island, particularly in the Siceljan towns, as for instance Aeimnestus and Archonidas, no one can be referred to here but Dionysius, whose munificence was retained in remembrance, and even found its way into the legend of Coriolanus. According to our corrected comparative chronology, the year 344 answers to Ol. 94. 2: at that time the peace with Carthage had been renewed two years before; and Dionysius, who was exceedingly active in strengthening and extending his power, had strong motives for seeking the friendship even of distant states. In Ol. 92. 4, to which the common calculation would bring us, the Carthaginian war was raging in the island, and Selinus and Himera were destroyed: and Dionysius does not make his appearance till three years after.

Sicily was the granary of the Romans, whenever their crops failed. Their traffick with it is mentioned in their first treaty with the Carthaginians. Thus its fortunes excited interest at Rome, where the termination of the Peloponnesian war may probably have been heard of with indifference. Hence the Annals under the year 324 noted that a forein armament, called in by the internal dissensions among the cities, landed in Sicily. Livy

[1247] See p. 494. [48] Livy, IV. 52.

says, this was the first time the Carthaginians made their appearance there[1249]: this statement without doubt he incautiously copied from some annalist of the seventh century, who knew of no transmarine enemies of the Sicilians except the Carthaginians. But the contemporary chronicles cannot have been speaking of them: for their expedition against Gelo took place fifty years before; and between that and Ol. 92. 4 they made no attempt to enlarge their territory, which had been reduced to a small number of forts. The people meant however are not the Carthaginians, but the Athenians. For the year 324, if our proposed adjustment of Greek and Roman chronology could be carried so far back with precision, would answer to Ol. 89. 2. We must not look however for the same accurate coincidence as in the period nearer to Ol. 99. 3, since there are variations in the Fasti even subsequently to the decemvirate[50]; to say nothing of the effect produced by the differences in the length of the year of office. The squadron under Laches and Charoeades, which was feeble and made no attempt of any moment, appeared on the coast of Sicily in Ol. 88. 2: the fleet under Sophocles and Eurymedon, which first gave importance to the interference of Athens in the affairs of Sicily, set sail in Ol. 88. 4.

The difference between the two dates assigned for the taking of the city serves in two ways to explain Livy's mistakes with regard to Greek chronology in his eighth and ninth book. He places the landing of Alexander of Epirus much too early, in 409 or 410, that is, in Ol. 110. 3 or 4. If we suppose however that this statement in years of the city was used with reference

[1249] IV. 29.

[50] Diodorus, under Ol. 90.1, inserts a consulship between those which Livy gives for 327 and 328 ; nor is there any reason to dispute ts authenticity.

to Cato's tables by the annalist who misled him, and yet in reality applied to those in which the destruction of the city was dated in Ol. 99. 3, the foundation in Ol. 8. 3, it will give us Ol. 111. 4, or 112. 1: and that this was the time of Alexander's expedition is quite certain[1251]. By an opposite mistake he places the death of the same prince and the foundation of Alexandria in 428 according to his own era[52], or in Ol. 114. 1: which is demonstrably erroneous as to the former event, and notoriously so as to the latter. Eusebius dates this in Ol. 112..3, or in U. C. 423, according to Cato. Now one of the many heads which have been puzzled by comparative chronology, must have reckoned this number from Ol. 8. 3, and so have got Ol. 114. 1. The very same errour prevails in the passage where Livy assumes that the death of

[1251] Livy, VIII. 3: he speaks of it after mentioning the election of the consuls for 410: but the statements introduced in this manner usually refer in him to the preceding year. This explains how Claudius Quadrigarius came to place the war with the Gauls on the Anio, and the single combat of T. Manlius, which, according to Livy's era occurred in 394, in 388: see Livy, VI. 42. If he mentioned the date, and not the military tribunes, it would seem that he was not in errour, but that he was not understood to be following the era of Fabius: at the same time it is also possible that he may have made the same mistake as Livy in the passage mentioned above. Orosius places that event in the very same year, 388. A parallel to this discrepancy of eras is afforded by the chronicle of Anastasius, in which the years from the birth of Christ are throughout fewer by seven than according to our reckoning; and the accession of Justin I. is put under 511, that of Justinian in 520. Supposing that this discrepancy had not been observed, that we had scanty sources for the history of that time, and that we found it stated in this chronicle, that Belisarius landed in Italy in 530, while it was well establisht that Justinian mounted the throne in 527, one might easily be led to infer that the expedition took place in the fourth year of that emperor.

[52] VIII. 24. By these opposite blunders he lengthens Alexander's stay in Italy to eighteen years.

Alexander the Great, which took place in Ol. 114. 1. occurred in 434[1253], which according to his reckoning would be Ol. 115. 3.

[1253] He would not have said under this year, in IX.16, that, if Alexander had invaded Italy, Papirius Cursor would have been the general opposed to him ; nor is this the place where he would have instituted his celebrated comparison between the Roman power and that of Alexander ; had he supposed him to have died six years before. On the other hand there was an occasion for doing so if he found it stated that this was the year of his death.

ROME AFTER THE DEPARTURE OF THE GAULS.

THE departure of the Gauls gave the Romans nothing within the city except the desolate scene of a conflagration: and at least on the left bank of the Tiber it can only have been by accident if any house in the country had escaped destruction. The Peloponnesians in their invasions of Attica left no house or tree standing, wherever they marcht; and the Gauls were barbarians, beneath whose tread everything living perisht. Ostia may have held out. With regard to the small Latin towns incorporated in the Roman territory, it is no less improbable that the Gauls should have refrained from attacking any place where booty was to be won, than that such places should have been able to resist them. The greatest part of the citizens had been swept away[1254]: most of the men in the prime of life fell on the Alia: an enormous number, including women and children, who could not effect their escape, must have died by the sword, or been carried into slavery by the conquerors.

[1254] Τῶν πλείστων πολιτῶν ἀπολωλότων: Diodorus, XIV. 116. The statement that, while the Gauls were masters of the city, there were twenty thousand Romans under arms at Veii (see Plutarch, Camill. c. 26, and Zonaras, VII. 23, who was probably copying Plutarch, as he often did with regard to circumstances not mentioned by Dion), seems originally to have been only another way of saying that no more than half the army which fought on the Alia survived the battle.

How is it possible to believe that the Tiber can have covered the territory of Veii, at least as long as the Gallic army kept together? and many of the fugitives must have been overtaken by destruction in the very heart of Latium. If only a portion of the objects of religious worship could be carried off, and it was necessary to bury the chief part of them, the quantity of private property saved was assuredly far less in proportion: and the ransacking plunderers must have hunted out the articles buried, which were of greater value than the consecrated earthen vessels. The peasants on the left bank of the Tiber, even if they could save their lives, had no time to drive their cattle away, unless they took to flight before the battle: for immediately after the victory the enemy spread over the whole country round the city.

There is a statement, which though it has been excluded from history, gives us a conception of the helpless condition of Rome, after its evacuation by the Gauls: and it agrees in spirit with some legends which have been preserved, and which, though they are poetical, manifestly arose in a very early age; so that they represent the image which the Romans retained in their recollection, of the fate of their ancestors, not very long after the event.

While the Gauls were lying undisturbed in their encampments in Rome, they even began to pull down the city-walls: and the people in the first year after their return were wholly employed in repairing this damage, and in providing shelter[1255]. Nothing more was done than necessity required: it was not till 377 that a new wall of hewn stone was commenced[56].

Thus the Romans on their first return, while they were clearing away the rubbish, were lying no less unprotected, and exposed to no less rancorous enemies,

[1255] Τὰ τείχη ἀνεκαίνισαν: Zonaras, VII.23. [56] Livy, VI.32.

than the colony which Ezra led back to the ruins of the city of their fathers. In this state of things we can understand that dependent places, like Ficulea, and even such as could raise no greater force than the insignificant population that may have settled at Fidenae after its destruction, might throw off the yoke[1257]. Nor is it incredible that the sudden approach of their troops, and of those of the neighbouring townships, should have spread a panic, subsequently commemorated, in spite of the historians, by the solemnity called *populifugia*, which was celebrated on the nones of Quinctilis even down to a late age of the empire. This tradition is regarded by Varro,—who here again rejects the pretended victory of Camillus, inasmuch as he says that this event took place after the departure of the Gauls[58],—as perfectly historical. But he makes a distinction between the *populifugia* and the feast of the *Nonae Caprotinae*, which was celebrated on the same day; deriving the latter from an ancient Latin religious ceremony; and thereby tacitly discarding a kindred story of greater celebrity about that insurrection, which is related by Plutarch and Macrobius[59].

According to this the troops of the neighbouring

[1257] Yet it is unaccountable how such towns, for instance, Ficulea, which was only three miles from Rome, should have been left standing. Can the Gauls have allowed them to ransom themselves, and have kept their faith?

[58] Dies populifugia videtur nominatus, quod eo die tumultu repente fugerit populus: non multo enim post hic dies quam *decessus Gallorum ex urbe*; et qui tum sub urbe populi, ut Ficuleates ac Fidenates et finitimi alii, contra nos conjurarunt: De L. L. vi.3 (v. p.56).

[59] Plutarch, Romul. c.29. Camill. c.33. Macrobius, Saturn. i.11. If the latter in this passage was not copying from Plutarch, from whose philosophical writings his are often compiled,—if he had native books before his eyes,—the strength of his expressions about the weakness of Rome is remarkable: cum sedatus esset Gallicus motus, res publica vero ad tenue deducta.

towns encampt before Rome under the command of Postumius Livius, the dictator of Fidenae, and demanded a number of women and maidens of good families as the price of peace, or as hostages. The Romans were unable to make up their minds between the infamy of such submission and the impossibility of resisting, until a maidservant named Philotis or Tutula devised a plan which she carried into effect. She was clothed with a *praetexta,* and given up to the Latins, along with other girls of the same station, likewise disguised as noble ladies, amid the farewell tears of their pretended friends. The Latins, in their exultation at the insolent terms they had imposed, held a revel, and being excited to drink by their cunning captives lost all care and forethought, and fell into a deep sleep, during which the leader of the maids mounted a tree and held up the concerted signal, a burning torch, toward the city: whereupon the Romans surprised the unguarded camp, and massacred their audacious foes. Tutula and her companions were rewarded with their freedom and marriage-portions.

This is just as much a fable as the story of Judith, which is not unlike it: and there is another of a similar class, relating to the same period, taken from some nameless authors by Verrius Flaccus[1260]. In order that the scanty stock of bread might be reserved for those on whose preservation the existence of the republic depended, a resolution was taken and carried into effect, to throw all the old men above sixty into the Tiber; an act of cruelty so far from being unheard of among the ancients, that it is said to have been ordained by law in Ceos, and was extolled even beyond its shores. The sequel of the story however betrays its character. One old man was concealed by his duteous son; and in gratitude for the wise counsel which the republic often

[1260] Festus, Sexagenarios.

received from him through the mouth of that son, the law was repealed. The Roman legends, while history was in its infancy, were rich in domestic stories of this kind; such as that of Papirius Praetextatus, and that of the father who was condemned to be starved, and was fed with his daughter's milk. The abovementioned one shews to what a woful state tradition represented the Romans as having been reduced on their return.

But while we may certainly presume that in this time of distress the infirm must have been a heavy burthen on their countrymen, it must on the other hand have been felt necessary, as after similar calamities in other republics of antiquity, to adopt all possible means of increasing the number of the ablebodied men, which had been so greatly diminisht. The exiles, as in other places, were no doubt recalled: and very possibly it was to a general law of this kind that Camillus owed his return. The sojourners and freedmen too would naturally be enrolled in the tribes. Still more however was done. The Capenates, Veientines, and Faliscans, who had come over to the Romans during the late wars, received the civic franchise, and were incorporated two years after, in 368, into four new tribes[1261]: so that the number of these was now raised to five and twenty. Livy supposes that these persons were individual deserters: but it has already been remarkt that without doubt they were the inhabitants of dependent townships, which had revolted from the cities in question[62]. The persons who composed the four new tribes, must at least have been equal in number to a fifth of the old citizens then remaining. According to the system which Rome followed ever after in admitting foreiners, and by which alone she was enabled to receive whole communities into the commonwealth without altering its character, they ought to have been much more numerous,

[1261] Livy, VI. 4. 5.

[62] See pp. 468, 469.

perhaps even than those who made up the same number of tribes previous to the devastations of the war. There is good reason to suspect that the whole of Capena at this time became a part of the Roman state; for it never appears again as independent. It was wise policy in Rome, now that Latium had separated itself and become hostile, to repair her loss of citizens from another nation.

The people lookt forward with dismay to the rebuilding of the city, and vehemently desired to be spared this burthensome task: nor ought they to be taxt on this account with disgraceful faintheartedness. Small and mean as were the houses with which the Romans of the good old times contented themselves even in the days of their glory, still a man who had saved nothing could not build such a house without borrowing. Veii contained dwellinghouses and public edifices handsomer than those of the Romans before their destruction: the possession of that city, the gift of fate, had preserved the Roman name: it was at least spacious enough to hold the numbers now remaining: was this a thing to be voluntarily cast away? Its territory moreover contained the extensive districts which had been assigned to the commonalty a short time before, and which were at a distance from persons living at Rome. Now though the patricians had an opposite interest on this point,—since the ancient domain, and consequently far the largest part of their possessions, lay on the left bank, and, if Rome were deserted, would at least be deprived of immediate protection in time of war, — yet we have no right to question that there were also nobler motives which determined the perseverance of the senate; that the severe distress of the present moment was wisely foreseen to be the price of the future greatness of Rome. The humiliating resolution to forsake the city would beyond doubt have shaped the subsequent destinies of the nation. He who has taken the first step, from which

his heart withholds him, in abandoning his former glory, and his former efforts after greatness, will ever after let himself be driven along by considerations of the moment. If the Romans had settled on the other side of the Tiber, the bond between them and the Latins would have been entirely dissolved: these, uniting with the Volscians, would easily have establisht a colony within the deserted walls; and the river would have been a no less insurmountable barrier to the Roman Veientines, than it had been to the Etruscan. Even if these dangers had been averted, yet the same people, in another city, in another country, cut off from all its religious, mythical, and historical recollections, could not possibly have continued to be what it was in its home. It would have degenerated into a colony, with a history of yesterday's growth.

The lucky omen of a word, which no doubt had been prudently preconcerted[1263], decided the irresolute minds, that were wavering between distress and shame. Rome was rebuilt within a year, without question in a very wretched manner. The streets in the lower parts of the city had previously been broad and straight; for the sewers ran beneath them. Even on the hills, in its gradual enlargement under the kings, the same rule, which was followed in laying out new colonial towns, appears to have been observed, so far as the ground would allow: that is to say, there were straight broad streets reserved to the state[64], while the building-ground bounded by them was regularly parceled out and allotted

[1263] According to Dionysius (Plutarch, Camill. c. 32), Camillus had just called upon the first senator, L. Lucretius, to deliver his opinion, when the centurion was heard to say: *Let us stay here.* The details of the story are not worth a thought: but we must not omit to remark that L. Lucretius is here assumed to have been the first senator, because he had been consul in 361, and probably no other consul, except Manlius, was living. So far did the military tribunes stand below the consuls in rank.

[64] Hence the phrase *in publicum prodire.*

as property to individuals. This right the government seems to have regarded as extinct since the enemy's conquest. Hence everybody was allowed to build where he chose, in order that there might be a stronger inducement to make a beginning, and that after some progress so many additional voices might be gained in favour of patience and perseverance. The Romans in afterages, forgetting that but for this disadvantage they probably would not have been living at Rome, complained of the precipitation with which the city was rebuilt: for, even in its greatest splendour, it was impossible, before the fire under Nero, to change the crookedness and narrowness of the streets. When these defects however had been remedied, it was thought to be perceived that the broad straight streets were injurious to health[1265]: and assuredly this notion was not erroneous: for it is well known that in Rome at the present day those quarters, which have wide regular streets running through them, are much more unhealthy than those between the Tiber and the Via Flaminia, where the houses were erected in the middle ages with the same disregard of regularity and symmetry as at the hasty rebuilding after the departure of the Gauls. One is much more sensible in the former to the dangerous change of temperature which follows sunset; as one is in winter, after growing warm in sunny sheltered spots, to the cutting north winds which sweep through them when the sky is clear. I know not whether experience in Greece confirms the opposite opinion, maintained by Aristotle, namely, that broad streets, open to the east and north wind, are conducive to health. I should be almost inclined to look upon this as a mere theoretical assumption: for where can there have been any such at the time when he wrote, except in the Piraeus, which Hippodamus laid out in a regular manner[66]? With this

[1265] Tacitus, Ann. xv. 43.

[66] On this opinion see Aristotle, Polit. vii. 11. The capitals

exception the streets in all the Greek towns, even in Athens, were as narrow and winding as they are to this day in the East. The principle of the Roman *limitatio*, which regards every right as issuing from the state, was forein to the genuine Greeks, whose institutions rested on the idea of the citizens as individuals, and on that of original private property.

To lighten the task the senate granted bricks: everybody was allowed to hew stones or wood wherever he pleased, provided he gave security to finish his building within a year. By the grant of bricks must be meant, that the state allowed them to be taken from buildings already existing: for how could it have found the means of paying for new ones? Such buildings it had at Veii: and with a view of putting an end for ever to the hated scheme of migrating thither, it was wise to favour the demolition of that city, which was in fact reduced to an insignificant place, and barely continued to exist, till it in some measure revived under Augustus as a military colony. For the substructions of the Capitol too, which were built no long time after,—and no doubt on the side beneath the citadel, where Cominius and the Gauls clomb up the grass-covered rock—and for the repair of the walls, blocks of stone ready-hewn would be supplied by Veii. In this manner its temples and city-walls disappeared. The Romans who had staid there to avoid the charge of building, were commanded by an ordinance of the senate to return before a stated day, under pain of the severest punishment[1267].

A vast number of objects had been lost that could never be replaced: it is a marvel that any single one,

created by the will of the Macedonian kings were built, it is true, very regularly, and with broad streets, like Antioch, more especially the new town of Epiphanes: here however their injurious effects were at least diminisht by the arcades.

1267 Livy, VI.4. Here again *poena capitalis* does not necessarily mean the forfeiture of life.

the material of which was of any value to the barbarians, such as the brazen tables containing the treaties with the Latins in the temple of Diana and at the Rostra, or the statues of the envoys murdered at Fidenae, was not stolen; or that others, which were combustible, like the wooden image of Fortuna, were not destroyed. Or is the genuineness of all such movable articles as must have been left behind without being deposited in the Capitol no less suspicious than that of the crook of Romulus, which the augurs asserted they had found uninjured amid the dust and ashes of the straw-thatcht hut of Mavors[1268]? For the sake of this miracle they were ready to allow that the hut had been burnt down, though at other times that which was shewn standing was maintained to be the genuine one.

All who had afforded succour during this season of calamity were rewarded with honours: the matrons received the privilege of having orations spoken in their praise at their funerals: the Caerites and Massilians had the rights of municipals decreed to them; the latter perhaps with unusual marks of distinction[69]. Camillus, whom afterages called a second Romulus, was at this period the soul of the republic. As the leader of its armies in the wars which broke out on every side, no people remaining quiet except the unswervingly faithful Sabines, he confirmed and hightened the confidence of the nation in her great citizen now restored to her.

1268 Dionysius, Exc. 27. p.31, and Mai's note: Plutarch, Camill. c.32.

69 See note 149, and page 554.

THE WARS DOWN TO THE REFORM OF 384.

When the remnant of the Romans were collected in the city, and able to look about them again, they found that the state was bereft of its subjects, and had shrunk within its own limits; like Florence after the expulsion of the Duke of Athens. The towns which after the fall of Latium had placed themselves under the soverainty of Rome, for the sake of enjoying her protection, now disdained to submit to her. Even under the year 366 we already find mention of the revolt of the Latins and Hernicans[1270]: which however only means that the league then subsisting was dissolved. Still even if the Latins were not animated by any hostile feelings at the time of their separation, some such must ere long have inevitably taken root in their minds. As soon as the remains of that people had resumed its independence, its national assembly was of course reestablisht. To this assembly the Roman senate complained in 369, that no aid had been afforded them for the last three years; and the sense of their own weakness compelled them to take up with an empty evasion[71]. Still the union among the Latins at this time must have been very lax. Several towns were induced by their situation or by other circumstances to stand by the Romans: and this affords an

[1270] Defectio Latinorum Hernicorumque: Livy, VI. 2.

[71] Livy, VI. 10.

explanation how Latin colonies subject to Rome came to be founded during this period, such as Sutrium and Nepete, as well as Setia, which probably was one of the towns taken from the Volscians before the year 365. Under 372 Livy says, that Latium was an object of mistrust: yet at that very time Tusculum, Gabii, and Lavici sided with the Romans, while Lanuvium on the other hand was forming an alliance with the Volscians[1272]. Volunteers from Latin towns frequently served among the latter[73]: this, injurious as it was to the Romans, was not an act of national hostility; since the old league of Sp. Cassius, by which even individuals of each nation were prohibited from bearing arms against its confederates, had lost its validity.

The erroneous notion, that the Latins, from being the faithful allies of Rome, had now become her enemies, has been mainly fostered by the fact, that Praeneste, which in ancient times was one of the thirty towns, and subsequently was the principal one in Latium, appears after the year 373 at open war with Rome. Since that town however, at the time when the frontier lay between it and Tusculum, cannot have belonged to the Latins, but must have become a member of the Aequian state,—whether from having been subdued by it, or from having joined it in the days of its conquests*,—it is manifest that this Praenestine war takes the place of that which before was incessantly recurring with the Aequians. For after the year 367 no further mention is made of this people: nor do we meet with their name again till after the second Samnite war. It seems as if their union had been broken up, like that of the Latins. The Aequians, whom Rome subdued about the middle of the fifth

[1272] Livy, VI.21. Lavici, it is true, had been given up to a Roman colony (see p.464): her applying to Rome for protection is a proof that the colony had not been driven out.

[73] Livy, VI.7. 10. 12. 17. * See p.261.

century, were the original nation, dwelling among the mountains between the Liris and the Fucinus, and around the source of the Anio; whose name had previously been extended to their dependents and subjects. On this dissolution new commonwealths grew up; or, where a city had previously exercised dominion over a district, it henceforward formed a separate state. Thus Praeneste was soverain over at least eight towns[1274]: the Tiburtines too, whom Livy calls a nation[75], had several, the number of which is not mentioned, under them.

This breaking up of the Aequian state was probably the consequence of its having sustained a heavy blow from the Gauls. If Apulia was the object which allured them, they had a much easier road into it through the territory of the Aequians, which was full of unwalled hamlets, and through the four northern Sabellian cantons, than through Latium, which abounded in fortified towns, especially as after crossing its frontier they would have had to overcome the Samnites. Thus even the irruption of the Gauls turned out beneficial to Rome, and promoted her greatness. Perhaps this was the time when the Aequians, properly so called, entered into that isopolitan union with the Romans, which was evidently subsisting before the war broke out in 443.

It was with different feelings from the Latins, and as open enemies that the Volscians of Antium and Ecetra[76] dissolved a similar union, by which they had been connected with Rome for seventy years with very few interruptions. A long supprest feeling of animosity burst forth when Rome was fallen: nor can Antium, being a town of great strength and maritime power, have suffered in anything like the same degree as the interior of Latium from the terrible scourges of the age.

1274 See note 1295. 75 Livy, VII. 19.

76 Though Livy mostly speaks of the Volscian nation generally, we are to apply his words to these towns alone: VI. 31.

The very first campaign however, in 366, was far from fulfilling the visionary views with which this ungenerous attempt to crush fallen greatness had been entered on. At first indeed the one legion, which was all the republic could send into this quarter, was threatened with total destruction. It was forced to take refuge in an entrencht camp on mount Maecius, near Lanuvium, five and twenty miles from Rome: and the safety of the commonwealth rested with the body of troops, consisting of men superannuated or exempted from service, which Camillus being appointed dictator, led to its relief[1277]. At sunrise he fell upon the Volscians and their allies. The besieged legion sallied forth from its camp; and the enemy were defeated and routed with great slaughter. Such is the credible account of these events[78]: but here again the poetical tradition, anxious to glorify its hero in all his actions, has been busy. The legendary story, which Livy adopts according to his constant practice[79], says nothing about the previous distress, and makes Camillus take the field from the first. At the report of his approach the Volscians are struck with terrour, and raise an abatis round their camp, which was already fortified with a rampart and palisade. The dictator sets fire to the abatis. His good genius fans the flame, and makes it spread to the camp, from which the enemy are forced to retreat; and, being already cowed by the element, they rush in their flight upon the swords of the Romans, who destroy them.

[1277] Ἠναγκάσθη καὶ τοὺς οὐκ ἐν ὥρᾳ τῶν πολιτῶν, ἀλλ' ἤδη προβεβηκότας (perhaps παρηβηκότας) καθοπλίσαι: Plutarch, Camill. c. 34. These words designate the reserve consisting of the veterans (see pp. 121, 122), still more precisely than the expression of Diodorus, XIV. 117. πάντας τοὺς ἐν ἡλικίᾳ καθοπλίσαντες,—although the latter is very appropriate for the arming of the *causarii*.

[78] In Diodorus, XIV. 117, and Plutarch, Camill. c. 34.

[79] Plutarch combines the credible account with it: this is just the usual practice of Dionysius to mix up different stories together.

After this defeat, the Volscians made no fresh attempt until the third year was over. Camillus however, like Frederic after the battle of Collin, had to drive back the foes that encompast him, one after another. He compelled the Aequians to raise the siege of Bolae[1280]. Having done this he marcht into Etruria, where the cohorts assembled at Veii had not been strong enough to relieve Sutrium. The faithful citizens had been forced to capitulate, on leave to retire unmolested. The dictator however wrested the town from the conquerors. Here again there are unequivocal traces of poetry, in the story that the sad train of fugitives, who had brought away nothing but their lives, met the Roman army on the selfsame day on which they quitted their homes; and that Camillus took the Etruscans so completely by surprise, that the property which had fallen into their hands was entirely untoucht, and not a man among them escaped; the town having been suddenly surrounded, and all the gates occupied. Unless indeed the whole war before Sutrium is a mere fiction copied from an event which happened shortly after: for we again find under 369, in an account evidently taken from some Annals, that the Romans were compelled to leave their frontier on the side of Etruria unprotected, until the Volscian campaign was terminated by a victory. During this delay Nepete surrendered to the enemy; and they forced their way into Sutrium, where the citizens were reduced to defend themselves behind barricades in the streets. Camillus shut up the Etruscans in the quarter of the town which they had taken: here they were overpowered and cut to pieces. He then led his troops against Nepete, where

1280 Such is the account given by Diodorus: so that the colony demanded in 341 (see pp. 435, 436) may after all have been sent to Bolae subsequently, perhaps at the same time with that to Vitellia (p. 489); and Bolae may have become the fortified place in a Roman settlement, and have held out, like many others in Latium. According to Livy, VI. 2, at this time it was in the hands of the Aequians.

the persons through whose influence it had been surrendered, trembled at his vengeance. They refused to obey his summons to drive out or give up the Etruscan garrison. The latter however was unable to defend the unfortunate town. It was taken by storm; and the magistrates charged with betraying it were put to death[1281]. Henceforward this frontier continues tranquil down to the year 391, when the Romans went to war with the Tarquinians: and perhaps these were the only people with whom Rome had now been contending in these parts. Such at least was the case in the war of 368, in which year two towns belonging to the Tarquinians were taken and destroyed*: and the statement that in the abovementioned expedition of Camillus, which is every way liable to so much doubt, Sutrium was besieged by the whole Etruscan nation, clearly comes from the poem[82]. This town and Nepete received colonies,—the former in 372, the latter in 382[83],—and now formed the outworks of the Roman territory, which for sixty years continued inviolate.

The only military occurrence in Latium mentioned

[1281] In both years the relief comes too late, and the Etruscans after taking the town are shut up and destroyed in it; just as we find a like repetition in the fate of Cloelius on mount Algidus and before Ardea (pp. 269. 450). Plutarch transfers the second story from 369 to 374, and confounds Satricum with Sutrium, c. 37: this however no way warrants our preferring the first, on which the stamp of poetry is so evident. Diodorus here gives us no help toward settling the question: for he accumulates all these events, and more besides, under the pretended year of the taking of Rome, Ol. 98. 2; being unable to arrange them under the next five, which come twice over.

* Livy, VI. 4.

[82] Livy's expression, VI. 3, Etruria *prope* omnis, is again merely a falsification, for the sake of softening the precision of the ancient story.

[83] Velleius, I. 14. Livy, who places the establishment of the colony at Nepete in 372 (VI. 21), confounds the two places, and hence passes over Sutrium.

down to the year 369 is a predatory expedition into the territory of the Aequians in 367. It must have been thought that peace had been permanently secured in those parts since the tribunes demanded the assignment of the Pomptine district. This confidence however was delusive: for in 369 the Antiates, being reinforced by a number of volunteers from various Latin towns, fought an obstinate battle near Satricum against Camillus himself. A storm with a torrent of rain separated the combatants. The victory however was not doubtful: the Latin freebooters returned to their several homes; the Volscians retreated upon Antium. Satricum, which had once been one of the thirty Latin towns, appears, after sundry changes of fortune, a little before the Gallic invasion in insurrection against the soverainty of Rome[1284]. Whether it had not been subdued again before that disaster took place, or had revolted afresh, it was now a Volscian town, and was reduced by force of arms. Camillus purpost to besiege Antium itself: but every attempt to follow up his victory was prevented by the necessity of marching, as was before mentioned, against Sutrium and Nepete. Hence we find the vanquisht in the next year (370) again acting on the offensive, and in such force that it was necessary to appoint a dictator, A. Cornelius Cossus, against them. The Tyrrhenian town of Circeii, which had been occupied by Volscian colonists about eighty years before, and since 362 had been in the hands of Latin ones*, followed the feeling then prevalent in both these nations: and even if the colony sent to Velitrae consisted solely of Romans, the Volscian stock was still so predominant among the inhabitants, and was so firmly rooted there[85], that we cannot be surprised to find

[1284] See note 1028. * See p. 501.

[85] See p. 466. Velitrae was always regarded as a thoroughly Volscian place: hence even Dionysius quite forgot that it had originally been a Latin town. It is well known too that the Volscian inscription, as it is called, was found there.

volunteers from both these towns serving under the banners of the Antiates and Ecetrans, along with Latin and Hernican mercenaries. Numerous however as this army may have been, the dictator gained a complete victory over it in the Pomptine district, and took a number of prisoners, among the rest many who were regarded as rebels. As such they probably suffered punishment: and this may have decided the resolution of the Veliternians and Circeians to throw off the Roman yoke. It was carried into effect in 372, in which year we find both these towns, and not merely individual citizens from them, among the enemies of Rome[1286].

After the victory gained by Cossus, the Romans resolved to send a colony of two thousand citizens to Satricum, which had been taken the year before[87]. This settlement, by which they establisht themselves in the country between Antium and Lanuvium[88], induced the latter to unite with the Volscians in 372. The growth of this alliance excited anxiety. Even against the insurgents at Velitrae war was not declared without hesitation: the slightest advances would have found the senate ready to welcome them: the people was more violent. Although the Praenestines had been ravaging the territory of some Latin towns, which had continued faithful, the government still would not look upon them as enemies. It was only in the next year, after the Roman army in an engagement with the Veliternians near their town had to fight against a numerous body of auxiliaries from Praeneste,

[1286] Circeiensium quidam, et coloni etiam a Velitris Romani: Livy, VI. 12. Afterward, under 372: hostes novi, praeter Volscos—Circeiosque et Velitras colonias jamdiu molientes defectionem: VI. 21.

[87] Livy, VI. 16.

[88] The assignment of lands in the Pomptine district, mentioned under the next year (Livy, VI. 21), can hardly be anything but this very colony, the territory belonging to which may reasonably be regarded as the *ager Pomptinus*. This expression never means the marshes.

that war was declared against it. By means of Velitrae the Praenestines had a safe and open communication as the Aequians had formerly had, with the Antiates. Joining their forces with these, they took Satricum, and treated the Roman colonists with great cruelty. After this disaster Camillus was chosen military tribune for the seventh time in 374; although he begged to be excused on account of his old age and ill health. The confidence of the people that his wisdom would uphold the commonwealth, even though his arm was grown weak, was not deceived. It is not clear whether the Roman troops marcht against Praeneste or Satricum[1289]. The allies had a great superiority in numbers: but both the armies were equally eager to bring the campaign to a crisis: and L. Furius Medullinus, a younger member of the same house with Camillus, who was his collegue, and commanded alternately with him, was deaf to his admonitions against being overhasty. They were justified by the result. The legions fled toward the camp, where Camillus was lying sick. He roused himself; and his appearance checkt the fugitives: he collected them and led them on: the enemy drew back[90]. Thus much we may receive into our history, without however warranting its truth: but as to the victory, which according to Livy closed that melancholy day, according to Plutarch brightened the next, and which led to the capture of the enemy's camp, we must decidedly reject it[91].

[1289] Livy, VI. 22, says, the latter: but immediately before he relates that the army was summoned to meet before the Esquiline gate, that is, on the road to Lavici and Praeneste. Would this have been taken, when it must have struck off by crossroads in order to reach the Pomptine district?

[90] I follow Plutarch's account: Camill. c. 37.

[91] Here again in Livy's whole narrative the historical account has been supplanted by the legend. Had Camillus been able to bring about such a turn in the fortune of a battle already lost, his unwillingness to engage would have been totally unjustifiable. The

Nor is much credit due to the story that the Tusculans, some of whom were found among the captives, disarmed the anger of the senate by leaving their gates open to the legions sent against them, and by pursuing their peaceful occupations in the fields and in the town, as if they felt that they could not possibly have anything to dread from Rome: for here again we have no ground to rest on except the legend of Camillus. Yet it is one of those stories to which one would gladly give a place in history, where instances of a trust in the efficacy of magnanimous confidence are so very rare: and when we lower it to an ordinary key, it sounds very credible that the heavy judgement hanging over the Tusculans, in consequence of the breach of peace committed by some of their citizens, should have been averted by their politic conduct. Along with this indulgence, they are said to have received the Roman franchise[1292], which the Greek writers took to be that of the isopolites[93], but which seems rather to have been that of sympolity. For the breaking up of the Cassian league assuredly did not abolish the higher municipal rights bestowed on the Latins: and though Tusculum was an independent town of Latium at the time of the Latin war, this only proves that it must have been restored to the Latins at the peace of 392. That they should have received the highest Roman franchise, is out of the question[94]: and that of the Caerites was a punishment.

number of the four legions under him is assuredly fictitious; in stating however that each was 4000 strong, the annalists seem to have borne in mind that there were now twenty-five tribes: so that 150 centuries contained 3750 common soldiers; which, with 150 centurions and 75 standardbearers, make up 3975.

1292 Civitatem etiam impetraverunt: Livy, VI.26.

93 Μεταλαβεῖν ἰσοπολιτείας: Plutarch, Camill. c. 38.

94 On this point Dionysius is most completely mistaken: πολιτείαν ἔγνωσαν χαρίσασθαι, πάντων μεταδόντες ὧν τοῖς Ῥωμαίοις μετῆν. Ecl. de Virt. et Vit. ed. Val. p. 529. (p. 33. Frf.)

There is some difficulty in believing that Camillus even saved the army from a defeat; since the Praenestines in the next campaign of 375 ravaged the Roman territory up to the Colline gate, the internal dissensions having prevented the sending of any troops out of the city. T. Quinctius was now appointed dictator with the utmost haste, and without delay raised an army, before which the enemy retreated along the Salarian road; whether in the hope of inducing the Faliscans and Etruscans to take up arms, as the Samnites at a later period marcht along the upper Tiber with the same view, or for the sake of drawing the Romans to a distance from the Pomptine district, and thereby seconding the enterprises of the Volscians. Either of these plans would have been very judicious, could the framers have relied on being victorious in the field. On the Alia they offered battle, but the Romans, notwithstanding the spot, were no less confident of success: and on the enemy's part it was an act of folly to betake themselves to a country from which they could not secure their retreat to Praeneste. Hence they sought safety in a precipitate flight the moment the battle began to turn against them. The Romans pursued them; and such terrour preceded their march, that T. Quinctius in nine days took the same number of towns. According to Livy eight of these were subject to the Praenestines: and he looks upon Velitrae as the ninth[1295]; which without doubt is erroneous. For a town which had driven out a colony, would have had no mercy shewn to it; and yet Velitrae continues to subsist uninjured. Nor is it credible that a fortress, on which the Roman arms in later times were for years unable to make any impression, should have been carried by a first assault. The number of the nine conquered towns is well

1295 VI. 29. Octo oppida erant sub ditione Praenestinorum — deinceepsque, haud magno certamine captis, Velitras exercitus ductus: eae quoque expugnatae. Dionysius seems to have spoken merely of nine towns, without mentioning Velitrae: Exc. 28. p. 32.

ascertained. It was recorded in the inscription on the golden wreath, weighing two pounds and a third[1296], dedicated in the Capitol from the spoils by T. Quinctius, who triumpht on the twentieth day after his appointment. This inscription was the oldest among all those preserved at Rome, the age of which was accurately known[97].

On the tenth day after the battle Praeneste itself is said to have been taken. That a town which was impregnable should actually have surrendered, is inconceivable[98]. But the inhabitants, seeing place after place fall daily into the hands of the conqueror, may have been so dispirited as to bend their necks, and submit to a humiliating peace: which however was soon repented of

[1296] This was the way Cincius (in Festus, *Trientem*) explained the expression *trientem tertium pondo :* and the analogy of the similar phrases adduced, *quadrans quartus, sestertius, bes alter,* is decisive : although from the character of the favorite Roman numbers one would rather expect three pounds and a third : thus the vow in Livy, XXII. 10, is to expend 333333⅓ ases. And what if this was in reality the weight ? only the annalists used an erroneous expression, instead of *triens quartus :* for there is no reason to suppose that the inscription, although it probably contained more than what Livy states, should have specified the weight.

[97] The mode in which Pighius fills it up, is, as is usual with him, unscrupulously rash, and altogether inadmissible. Still there can be no doubt that in Livy, as the great Gronovius perceived, the words *diebus novem* have dropt out, owing to the recurrence of the latter. Thus we get three old Roman lines :

Júppiter, átque Divi omnés hoc dedérunt
Ut Titus Quínctius dictátor (Románus)
Oppida nóvem diebús novem cáperet.

Such inscriptions were always in Saturnian verses ; like that of the pretor L. Aemilius Regillus in honour of the naval victory off Erythrae (Livy, XL. 52, and Atilius Fortunatianus, p. 2680), and that of D. Brutus Callaicus (Schol. on Cicero, pro Arch. 11. 27).

[98] The statement that the statue of Jupiter Imperator was removed to the Capitol proves nothing. Lipsius has shewn that T. Quinctius Cincinnatus has been confounded with T. Quinctius Flamininus, and that it was brought from Macedonia, not from Praeneste : Drakenborch on Livy, VI. 29.

and broken, when a Roman army in the next year, 376, through the improvidence of its leaders, sustained great loss from the Volscians. On this occasion the Praenestines seduced some other Latin towns to join them. The defeat of 376 was avenged by the next military tribunes in 377, who ravaged the Volscian territory as far as Ecetra: and in the year after, 378, the war with the Antiates was brought to a close in its thirteenth year by a two days battle. The vanquisht army threw itself into Satricum. Here dissensions broke out between the parties, such as usually put an end to a confederacy when deserted by fortune. The Antiates were unwilling to prolong the war: it rested only with them to renew their ancient relation with Rome. Not so the Veliternians, who were already threatened with a punishment such as Rome actually inflicted upon them in the next generation. The Praenestines shared their indignation at finding themselves abandoned. When the Antiates had quitted Satricum, having without doubt ceded it to the Romans, it was still occupied by the allies, who burnt it to the ground. From its ashes they advanced suddenly upon Tusculum, and surprised its gates, which were but negligently guarded. The citizens fled, with their wives and children, into the spacious upper town. The Roman veteran legion[1299] hastened to assist them, and, being aided by the Tusculans from the hill, cut the intruders to pieces.

Soon after this the republic was disabled for forein enterprises through the efforts of the oligarchs to resist the Licinian bills. Tusculum was left to itself, and was besieged by the Veliternians. Hereupon the tribunes withdrew their veto against the elections. An army was sent from Rome to relieve her faithful subjects, and

[1299] Two legions, *exercitus longe validissimus*, had been sent against Satricum: beside these the reserve was in readiness; and civic legions were raised: Livy, VI. 32.

surrounded Velitrae[1300]. This town is repeatedly stated to have been besieged from the year 380 to 383. Under the latter year the undertaking is said to have been tedious, but one the event of which could not be doubted[1]. Nevertheless this assuredly did not lead to its capture, as Livy, though he does not venture to assert it, means to insinuate: others did not scruple to speak of this as the closing exploit of Camillus[2]. After the restoration of the consulship, the Romans are at peace with Velitrae; and this is not broken till 392. It is clear that the internal dissensions of the republic afforded the Veliternians a lucky opportunity of making peace without undergoing any punishment. Nor is it less clear that Praeneste had not done anything previously to support them. To all appearance it had already taken advantage in 380 of the senate's readiness to conclude a peace leaving everything as it was. The municipal relation with these two towns was probably renewed, as well as that with Antium.

A war with the Gauls, in which M. Camillus gained his last laurels, is also spoken of at the close of the present period, in 383. It is extremely surprising however that Livy, who is so fond of describing battles, says nothing about the one in this war, except that many thousand barbarians fell in the action, many thousands in the camp, and that those who escaped owed their safety to the remoteness of Apulia, whither they turned

[1300] As the Fasti had no other means of indicating that during the five years, 379-383, some twelve months had been spent in interreigns, except by inserting them collectively as a whole year ; this could not but occasion a gap somewhere or other in the course of events. According to them the relief of Tusculum took place in 380, though it evidently belongs to the year before, 379.

[1] Livy, VI.42.

[2] Plutarch, Camill. c. 42. Here one recognizes the hand of Dionysius : he shews the same credulity with regard to the taking of Antium : see p. 255, note 578.

their flight, and to their dispersion on their way thither. Dionysius had more detailed information, namely, that Camillus waited quietly, till the Gauls, through their intemperance, had become bloated, sluggish, enervated, and unwieldy[1303]; and that meanwhile he had been diligent in training his own army, and had kept them in their camp on the hights till the time for battle arrived. Yet Polybius, who regards the expedition of the Gauls in 389 as the first after the taking of the city, knew nothing of this one: nor did Fabius, as is proved by the silence of Diodorus: nor did Q. Quadrigarius[4]. Besides, if we compare this account with the great victory gained by L. Camillus in 401, on the very spot here mentioned, the Alban mount, after which the Gauls in like manner retreated into Apulia, we may see it markt with the peculiar vice of the later Roman annalists, that of repeating a story and throwing it back into an earlier, whether mythical or historical, period. Here again tradition has intruded into history, with the fables and fictions, nay, the deliberate falsehoods, in which the foolish vanity of afterages loved to dress it up.

[1303] If we compare Dionysius, Exc. 29. p. 35 foll. with Appian, fr. 7. Celt. p. 81, we find that the latter here again was copying the former: Plutarch however cannot have done so, since he places the war on the Anio. It looks as if a confused notion of the evil effects produced on the Cimbrians by their sojourn in Italy had supplied the materials for this strange story.

[4] It is true, the latter spoke of a war with the Gauls under the year 388: but it was that on the Anio, where T. Manlius slew the Gaul in single combat: see note 1251.

CIVIL HISTORY DOWN TO THE YEAR 374.

I HAVE traced the history of the wars which followed the restoration of the city, down to the interval of peace occasioned by the necessity of settling the new constitution of the commonwealth after the passing of the Licinian laws. The bulk of this volume will not allow me to carry down the internal history beyond the epoch at which those laws were first brought forward.

The ferment which produced them did not arise, like the commotions which led to the Publilian laws, and to the appointment of the decemvirs, from the pretensions of the higher class of the plebeians to more freedom, and to a due share of civil offices, but from the misery which the Gallic invasion left behind. Revolutions which are brought on by general distress, in attempting to remedy it, usually destroy the foundations of a permanent free constitution, and, after horrible convulsions, have almost always ended in despotism. It is the noblest glory of the Roman people, a glory in which no other can vie with them, that twice in their history such an excitement gave rise to a higher and more durable state of legal freedom. What has elsewhere been a deathblow to liberty, was at Rome a cure for the internal disorders of the republic, and raised its constitution to that state, which, considering the transitoriness of everything human, is perhaps, like a similar stage in our individual happiness, the most desirable of all. It stopt only one step short of that perfection, after which every further

change is an inroad of corruption and decay, even though it may long be unacknowledged as such, nay regarded as an advance and an improvement.

Since the time of the decemvirate it is evident that the prosperity of the nation had vastly increast. The placid feeling thus diffused, along with the union of the clients with the plebs, will account for the conciliatory spirit apparent in the quarrels between the parties from the date of the death of Maelius. The fortunes of the patricians had been very much augmented by the aggrandizement of the public domain. The plebeians had received assignments of land, which, though all but the Veientine one were scanty, at least gave a number of families some little property. Many were enricht by the contributions exacted from conquered states, and by prize-money: and the paying the troops became a great benefit, as soon as the tenth was raised from the domain-lands, and the tribute but seldom levied, and lowered to moderate assessments. For half a century the Roman territory had been almost exempt from the ravages of war. The rise in the price of corn and cattle, which we find in Greece, extended, we may be sure, to Latium: and its beneficial results must have been hightened by the reduction in the weight of the as[1305]. A moderate rate of interest was establisht[6]: nor do we meet with any complaints of oppression exercised toward debtors.

Thus during this period the practice of pledging the person, which the Twelve Tables had allowed to subsist, did not produce any revolting effects of frequent and general occurrence. He whose person was pledged was usually able to free himself on the judgement-day by

[1305] According to the conjecture started in Vol. I. p. 459, that the ases with the figure of an ox refer to the valuation of the *multa* by the law of 325.

[6] See p. 340. The place for explaining what the *foenus unciarium* was, will occur in the next volume, at the time of its re-establishment.

paying his debt: and the provision in the Tables that his civil rights should be on a par with those of an independent citizen[1307], removed the stain of ignominy from his condition, and facilitated his carrying on transactions to redeem himself. Originally, it is evident, a *nexus* was no less incapable, than a person who stood *in potestate* or *in manu*, to do any legal act for himself. He was the property of another, not his own: and all that he had was also at the disposal of that other. Now however this was remedied by a fiction, which gave legal validity to what every honest man had already recognized in his conscience as a right. And after all if when the day came, the debtor could not redeem his pledge at the moment, but made oath that he had means sufficient for it[8], the tribunes would seldom allow him to call in vain for their aid.

In this state of things certain provisions of the Tables, which sound excessively cruel, and which caused them to be branded even among the ancients with the character of detestable barbarity, were not very terrible in fact. It was only when a debt had assumed the form of a *nexum*, that a creditor could exact it summarily[9]. Care was taken however to protect his right in all other cases, and to afford him means of converting a common debt into a *nexum*. We meet with a very great variety of instances of such debts, arising out of services performed, out of commercial transactions, out of a settlement of accounts, out of inheritances: it is impossible to enumerate them all. But to these the law likewise added judicial sentences; not merely those which establisht debts contracted in any of the aforementioned ways, but also those which imposed damages or fines for any crime or trespass. On this head the decemvirs enacted, what again was probably a mere repetition of the old law, that for

[1307] See p. 331, note 746. [8] Bonam copiam jurare.

[9] By *vindicatio* or *manus injectio*.

such debts a respite of thirty days should be granted. When this term was over, the creditor was authorized to arrest his debtor, and bring him into court. If he did not discharge his debt then, or find some one to be security for him, the creditor was to take him home and put him in fetters or chains, which were not to weigh less than fifteen pounds, but might be heavier. The prisoner was allowed to provide himself with food: if he did not do so, the creditor was bound to give him a pound of corn a day, which he might increase, if he pleased. This imprisonment lasted sixty days, during which the debtor or his friend might take measures for procuring his release[1310]. If it was not effected, the prisoner was to be led before the pretor in the Comitium on three consecutive market-days[11], and the amount of his debt was to be proclaimed. Should no one take compassion on him even then, his master might put him to death, or sell him on the other side of the Tibur[12]. If there were several creditors, they might share his body amongst them: nor, if any one chopt off a larger part than was proportionate to his debt, was he punishable for doing so[13].

This last provision obviates the difficulty which stood in Shylock's way under a similar legal title: and it shews

[1310] Here again, if we add this term to the former one, we get the number thrice thirty.

[11] This is fresh evidence that these laws only affected the plebeians.

[12] Not in Latium; lest he should return from thence in case of his being manumitted, and assert his rights as a *municeps*. This shews that no place in Etruria stood in an isopolitan relation with Rome in the time of the decemvirs.

[13] *Si plus minusve secuerunt se fraude esto.* This itself ought to have kept every soundheaded person from thinking of a *sectio bonorum:* the Poetelian law first made property liable for debt. It is almost superfluous to refer for all these enactments to Gellius, xx. 1.

how completely in earnest the legislators were that the law should be executed. Even in case that among several creditors one was inexorable, his right was secured to him: he was allowed, if not to slay the common debtor at a blow, yet to mutilate him so that death was sure to ensue. Every attempt to explain away the inhumanity of this law is a waste of labour in the cause of falsehood. It was in reality quite as revolting as its literal meaning: nor would I assert, as Gellius does, that it was never carried into effect, that no debtor was ever put to death, or actually cut to pieces. But its execution must of course have been indescribably rare: for this law with all its terrours was merely designed to compell the debtor to redeem himself, or to enter into a *nexum*, by which he became liable to pay interest, but at the same time obtained a respite, and if he could not offer any money-payment, workt out his debt by labour. A vigorous son too would at times render his own person liable to bondage in the room of his decrepit father[1314]: and few men can have been so forlorn that no one should be found to come forward in their behalf, and make the creditor an offer from which he would gain more than from the sale of his wretched captive. If any ruffian rejected reasonable terms, for the sake of quenching his rage, on account of the money he had lost, in the blood of his debtor, or turned a deaf ear to the humane representations of the partners in his loss, in such a case the tribunes would assuredly have interposed.

To pass a fair judgement on the authors of this law, it must be considered that they wanted to overcome the combined forces of obstinacy and avarice; passions, which had both of them struck equally deep roots in the Roman character, and which must frequently have baffled all ordinary

[1314] Cum se C. Publilius ob aes alienum paternum nexum dedisset: Livy, VIII. 28.

efforts to enforce payment on such as had the means for it. The *nexus* saw the day approaching when he was to forfeit his freedom, and to be abandoned to personal chastisement from an incenst master. But he whose person was not pledged laught at all threats: he might emancipate his son, and make over his whole property to him. Consequently, if he had to enter into a *nexum*, he might obtain fair conditions, and the reduction of his debt to a sum, after paying which he and his family would still have something over, whether he made the payment immediately, or pledged himself for a certain term. The creditor too was a gainer, even if he abated a considerable sum. If the debtor had no property, beyond the strength of his limbs, it was still less possible to induce him to work out his debt, save by fear of the worst. This obstinacy, which was encouraged to extort a fair compromise by a man's conviction that he should not leave his family in utter beggary, must have possest a degree of force in the iron breasts of the old Romans, such as according to our notions it is quite impossible to estimate[1315].

The means of payment became scarcer in proportion as the number of debtors increast. Though, even after the Gallic invasion, the right of killing a debtor was almost as unlikely to be put in practice as the torture or the wager of battle, which were subsisting in our days in the English criminal code, still the only way of defeating it was by bondage. Nor did this bondage commence on a distant day of forfeiture. It was that form of the *nexum* in which the debtor was to discharge his debt by

[1315] I know, said a Janissary to a European consul who was pressing him hard for a debt, that you can get a sentence of death pronounced against me. But when I am executed, what will the merchant gain then? and I tell you that I will not pay more than I have offered. Felix Beaujour, Tableau du Commerce de la Grèce, II. p. 176.

labour[1316]: and he spent the term of his bondage in confinement like a slave. This was the lot of the debtor who was made over to his creditor as his property in consequence of having borrowed money from him, as well as of those whom the law threatened with death, or with being sold into servitude. The two classes were driven in crowds to the dungeons in the houses of the nobles[17], where they pined away with hunger and distress[18]. The soldier whom Manlius releast was doomed to live in prison like a confined slave: not a word is said about his being put to death, or sold to savage foreiners.

The necessity of rebuilding the houses destroyed both in the city and country, sorry as the architecture might be, and at the same time that of procuring cattle for draught, implements of husbandry, and seed-corn, led inevitably to a general state of debt. The quantity of money required could not possibly be forthcoming; more especially as the heavy brass coin then in use could not be carried off except in carts, and there had been only six and thirty hours for escaping from the city after the news of the defeat. Hence it was necessary to draw money to Rome from forein parts. It was the practice of the Lombards, who carried on the same transactions as the old *argentarii*, in precisely the same manner[19], to transfer their banks to the places where a high interest

[1316] See Vol. I. p. 578, note 1273. Livy, VII. 19: Etsi levata usura erat, sorte ipsa obruebantur inopes, nexumque inibant.

[17] Gregatim quotidie de foro addictos duci, et repleri vinctis nobiles domos: et ubicumque patricius habitet, ibi carcerem privatum esse: Livy, VI. 36.

[18] See Vol. i. p. 598.

[19] I have shewn in the notes on the Vatican fragments of the speech *pro Fonteio*, that the system of bookkeeping by double-entries, so far from being an invention of the Lombards, is as old as the time of the Romans, and was used by the questors in their accounts: the same was probably true with regard to bills of exchange. The word *campsare*, which, as belonging to the language of common life, has

was procurable, even though they lay in very remote countries. But the rate of interest establisht by the Twelve Tables could not allure any banker: it was much lower than at Athens[1320]: the enactment of the uncial interest in 393 cannot have been anything but a restoration of the old rate, which must have been abolisht after the Gallic invasion, for the very purpose of drawing capital to Rome. Nor were the citizens merely compelled to borrow money for their own immediate personal wants: taxes were also imposed on them, partly for the execution of public works, partly to replace the gold taken from the temples for the ransom of the city[21]. Now as the tribute was still raised, not on a person's income, but on the property to which his name was annext in the census, so that he had to pay as if he had the free enjoyment of the produce, and yet at the same time was forced to support himself and his family, it often happened that the only thing he could do was to add the interest of his debt, or at least part of it, to the capital, and thus year after year to augment the sum for which he was liable.

To all appearance this state of things, in which every deviation from equity wounded men's feelings far more than at other times, was rendered still worse by the circumstance that the old landrolls, which had previously supplied the means and the groundwork for making out new ones every lustre, if they were not utterly lost, had

only been preserved by accident, was probably used even in those times for such transactions.

[1320] See Boeckh's Economy of Athens, Book I. § 22.

[21] On the replacing of the money borrowed from the temples, see p. 553, note 1228. The building of the city-walls, for which a tribute was raised (Livy VI. 32), occurred somewhat later: but the expense of erecting the wall on the Capitoline Mount cannot have been defrayed in any other way: and what a number of public edifices must there have been, the necessary repairs of which could not be deferred!

at least become totally inapplicable, owing to the general destruction of property; and no progress was made in drawing up new ones. For during fifteen years tribute was levied by conjectural rates[1322]; which cannot but have been attended with acts of partiality and oppression. Moreover censors were elected thrice, in 371, 372, and 373, to make a settlement more conformable with justice. They were to inquire into the state of debts[23]; with a view no doubt to the transfer of such property as was pledged; and perhaps to prepare the way for a general liquidation of debts, such as was afterward effected, by an equivalent in lieu of money. But in the first year, the death of one of the censors furnisht a plea for making his collegue resign: the second pair were forced to lay down their charge on the pretext that there had been an errour in taking the auspices, but in reality, as is quite palpable, because one of them, P. Trebonius, had been chosen from among the plebs, on the principle followed in the election of military tribunes, with whose office the censorship was combined[24]: the third pair did nothing[25].

Here it is impossible not to recognize the hand of the ruling order, who wanted to enjoy the produce of the estates of their debtors, without paying tribute for them,—

1322 This is the only meaning one can assign to the statement in Festus, on *Tributorum*, concerning the *tributum temerarium* which was neither paid *in capita* nor *ex censu, quia proximis quindecim annis post urbem a Gallis captam census alius* (read *actus*) *non erat.*

23 Maxime propter incertam famam aeris alieni: Livy, VI. 27. Noscendi aeris alieni causa: 31.

24 I have shewn above, p. 391, that the two military tribunes whom Diodorus (XV. 51) has in addition to those in Livy, were censors. Of their names one, Ἐρενούκιος, is without doubt miswritten, and ought to be Γενούκιος: the Genucii had families in both orders, and this person must have been a patrician: the Trebonii are known to us as plebeians, ever since the tribune of 307, and only as such.

25 *Ne rem agerent, bello impediti sunt:* this is a mere colour, devised at the earliest by the annalists, or perhaps by Livy himself.

not perceiving in their folly that the city, which they regarded as their property, must infallibly be utterly ruined, if the middle class was reduced to beggary. We still find the patricians acting the part of usurers[1326]: not that one can believe that they had been fortunate enough to save all their cash; but chiefly no doubt because the forein moneydealers could not carry on their traffic except under the name of a patron; a privilege for which of course they had to pay dear, as bondmen had for licence to carry on trade and commerce. Besides the patricians had demands of earlier times still outstanding.

The Roman oligarchy might have acted overbearingly toward the plebeian knights without bringing on its own downfall, if, like the Carthaginian and those in some of the Greek states, or as was above all the policy of Berne, it had studied to provide for the wellbeing of the mass of the people. Nay, even without shewing any peculiar mildness or benevolence in its administration, it might have kept its ground longer, had the senate been acquainted with the expedients which modern financiers have devised for glossing over present distress by shifting the burthen on afterages; or even if there had been any system of borrowing money on mortgage, and of raising permanent loans at a moderate rate of interest.

M. Manlius, the preserver of the Capitol, of whom the chronicles relate, that in birth and valour he was second to none, and in personal beauty, exploits, eloquence, vigour, and daring superior to all[27], found himself bitterly disappointed in his claims to gratitude and honour. Camillus, his enemy, to whom he felt himself at least equal,

[1326] Livy, VI.36, at the end of the chapter.

[27] Quadrigarius, in Gellius, XVII. 2: *Forma, factis, eloquentia, dignitate, acrimonia, confidentia, pariter praecellebat.* Pliny, VII.29, relates that he took the spoils of two foes as a *praetextatus*, before he was seventeen: he was the first knight who gained a mural crown: he displayed 6 civic crowns, 37 honorable prizes, and 23 scars *adverso corpore.*

who had not shared in the distress of the siege, who had imprecated curses on his country, was repeatedly raised by the houses to the dictatorship, and by the comitia, which were under the influence of the aristocracy, to the military tribunate: while he, though a consular, found himself excluded from all dignities. This insulting neglect, in return for an action standing foremost but not alone in a heroic life the energy of which was still unexhausted, poisoned his heart with virulent rancour. He was one of those strong-minded men, who have received a calling to be the first among their countrymen, and who feel an unconquerable longing to fulfill it, while low minds, envying and disliking them, are resolved to keep them back from the place due to them; one of those the superhuman vehemence of whose character, when drawn forth by such a conflict, makes even honest but timid natures shrink. For indeed it is their doom to be haunted by a spirit, against the snares of which nothing can protect them but the confidence and esteem of honorable minds. God will require their souls from those who have driven them into fatal courses: their faults he will judge more mercifully, than those which have ruined his noblest work. These mighty characters have always an intense inborn feeling in behalf of justice, truth, and whatever is glorious: they are animated by love and pity, by hatred and indignation of the right sort. These become subservient to their fierce passions, but do not die away. It is glaringly unjust, even when they have gone irretrievably astray, to regard actions, which in a man of blameless life would be extolled as noble and praiseworthy, in any other light in them; although vulgar souls may do the same things from selfish motives.

It was undoubtedly with pure feelings in the first instance that Manlius took pity on the helpless debtors. He recognized an old fellow-soldier in the Forum, a captain distinguisht by a number of exploits, whom a usurer

was carrying away in fetters according to the sentence of the law. Manlius paid his debt on the spot, and gave him back to his family. When the man could find words, he told the surrounding crowd the story of his fate, in which most of his hearers recognized their own. The war, and the compulsory rebuilding of his house, had plunged him in debt: the interest had been added to the capital, till its amount was more than doubled, and at length far exceeded his whole fortune. He bared his honorable scars, the memorials of many wars, and vowed eternal gratitude and unbounded devotion to his benefactor. All the spectators were stirred by the sight: Manlius was roused to enthusiasm. In the sight of the whole people he sold an estate, the most valuable part of his inheritance, and swore that, so long as he had a single pound, he would not allow any Roman to be carried into bondage for debt. This oath he faithfully kept. When he was capitally impeacht, he brought forward near four hundred citizens, whom he had rescued from imprisonment by lending them money without interest.

From this day forth the commonalty hailed him with the name of its patron[1328], which no doubt may have excited uneasiness in the government. Plebeians of all classes began to assemble in his house in the citadel. In addressing them he is said to have accused his own order of embezzling the Gallic gold, and to have urged that they ought to be made to refund it, to be employed in a general liquidation of debts. The mention of a tribute as imposed in order to raise that money[29], is a mark that this is not a fiction devised by the annalists to fill up the story, and that it does not refer to the

[1328] Livy, VI. 18. Victor, de vir. ill. 24: where however this highly honorable name is converted into *patronus populi*, and referred to the saving of the Capitol. He seems also to have been called *parens plebis*: Livy, VI. 14. 3.

[29] Livy, VI. 14. Ad redimendam civitatem a Gallis—tributo collationem factam.

gold fabled to have been retaken by Camillus. What the chronicles meant was a sum levied to replace the one borrowed from the temples, and that too by double the amount: for the sum walled up was twice as much as the ransom[1330]. Had this measure been deferred to a season of prosperity, it would have been unobjectionable, as a check to keep the state from accustoming itself to look to the plunder of the temples as a shift always ready in time of need. But when the tribute was to be paid with money borrowed from the usurers, what may perhaps have been mere bigotry, was regarded as a piece of revolting hypocrisy: and as it was done for the sake of making a deposit which was to be concealed from all eyes, nobody could be blamed for suspecting that the tax was extorted for the sole benefit of a few powerful peculators, who divided its produce among them, after having received a percentage from such of their clients as carried on usury under their name, and lent the same sum to the unfortunate taxpayers. As soon as such a suspicion had once spread, it past for an incontrovertible truth with men ground down by poverty: and this must have tended far more than all previous acts of oppression to bring on that fearful mood in which insurrection becomes a welcome idea.

Such charges could only serve to embitter irritation. The real way to alleviate the distress was to propose an assignment of lands, and a liquidation of debts. Dionysius[31] related that Manlius demanded such a liquidation, or that the public domain should be sold, to pay off the debts with the produce. The latter measure, if adopted merely with regard to a portion of the domain, such namely as ought in equity to have been allotted to the commonalty, was the same thing with the other under

[1330] Pliny, XXXIII. 15.

[31] For he is the writer whose language we read in Appian, fr. 9. Italic. p. 40.

a better form. This is too early a period for any propositions except such as the curies might at least give a compulsory assent to: so that a general agrarian law is out of the question.

It was the year 370, the fifth after the restoration of the city. A. Cornelius Cossus had been appointed dictator on account of the Volscian war. His authority lasted beyond the campaign, which soon came to an end; and he ordered Manlius to be thrown into prison for slandering the government and for sedition. Hereupon, as though the prisoner had been their patron or intimate friend, many of the plebeians, beside those who owed him their freedom and the light of heaven, went into mourning for him with their clothes rent, and their hair and beard in disorder. Their numbers increast daily; and they never left the gate of his prison from daybreak to evening. With the view of alienating the commonalty from their leader, it was resolved to send a colony of two thousand citizens to Satricum. But from the smallness of the number, and the scanty allotment of two jugers and a half to each family[1332], this proposal was received with scorn; while the situation of the place, where the setlers did in fact perish shortly after, caused it to be deemed a perfidious stratagem. The adherents of Manlius now never quitted his prison even during the night. Threats were heard of releasing him by force. The senate, instead of bringing him to trial, took the resolution of giving him his liberty; whether for the sake of avoiding any violent outbreak for the moment, or because they had not even plausible evidence to bear out a charge of high treason against him, while there seemed to be reason for expecting that his violent character would now infallibly mislead him into such steps as would render him legally criminal.

[1332] 5000 jugers are just a hundred questorian or plebeian centuries of 100 actus: see p. 162, note 352.

Who can doubt that, when his party saw themselves again assembled around him, their language was now far fiercer and more menacing than before? Who will maintain that the idea of usurping kingly power, which no Roman in his sound senses could have conceived, may not have seized upon his feverish soul amid the darkness of his dungeon, so as never again to forsake it? Yet Livy could nowhere find any action laid to his charge, which pointed immediately to such an aim[1333]. Perhaps Manlius would even now have acquiesced in the condition of a private citizen, if his just claims had been satisfied. But the ruling party could no more bring themselves to make concessions and shew confidence, than Manlius could exercise a virtuous resignation for the sake of peace. Thus, whether guilty or innocent, he became an extremely dangerous person, through a misfortune for which there was no cure: and matters could not fail to grow worse and worse. This knot might have been solved by ostracism: and the tribunes who impeacht him before the centuries[34], can hardly have had any other object than to remove him from the city, because his remaining there was incompatible with the existence of a government, which, however culpable it might be, could not have been overthrown by violence without extreme injustice and the most calamitous consequences. It is clear that they only wanted to force him to quit Rome.

[1333] Quae praeter coetus multitudinis, seditiosasque voces, et largitionem, et fallax indicium, pertinentia proprie ad regni crimen—objecta sint—apud neminem auctorem invenio: Livy, VI. 20.

[34] Their names in our editions of Livy, VI. 19. are written M. Maenius and Q. Publilius, both of them from conjectures, which with regard to the second may be considered as wellfounded, and would make him the father or grandfather of the dictator: for the first name however the reading of all the manuscripts, M. Menenius, which Sigonius has too boldly changed, ought to be restored both here and in IV. 43: a great many tribunes of the people bear the names of patrician houses.

As things were now, he might have taken up the franchise of a municipal town without shame: unfortunately he would not give way, and awaited his trial. This seemed to hold out the fairer prospect for him, in proportion to the immoderate lengths to which the patricians carried their fury. The behaviour of his friends, who all deserted him, in violation of the sacred duties they owed to their house,—that of his brethren, who renounced him, and did not even wear the outward signs of grief,—were the more revolting, when it was remembered that C. Claudius and his whole house had put on mourning during the impeachment of the decemvir. When he called however upon those as his witnesses, whose freedom and property he had restored to them, or whose life he had saved in war,—among the rest on C. Servilius, the master of the horse, who did not make his appearance to repay this debt by his evidence;—when he displayed the arms of thirty enemies whom he had slain, the forty honorary guerdons which he had received from divers generals, when he laid bare the scars upon his breast, and turning his eyes from the people assembled in the Field of Mars toward the Capitol, prayed and implored, not ungrateful men who forget every benefit, but the immortal gods, to remember in this his need that it was he who had saved their holy temple from desecration and destruction;—then even those who deemed his preservation irreconcilable with that of the state, felt that they were unworthy to condemn so great a man. That he was not condemned is allowed: nor is it to be questioned that the centuries acquitted him. The statement that sentence was deferred, was merely invented on the false notion that the court which condemned him was a legitimate continuation of that in the Field of Mars.

All thought of terminating the affair peaceably was now at an end. The partisans of Manlius made preparations to aid him in defending the Capitol by arms. The persons of the greatest weight and prudence in the plebs

sorrowfully relinquisht the victory, in an affair which was now become desperate, to men less honest and generous than their erring adversary. On the other hand Camillus, having been appointed dictator for the fourth time[1335], and being now in the city[36], was busy in accomplishing his enemy's downfall. Protected by the unlimited power of his office, the public prosecutors arraigned Manlius before the curies on the same charge which had previously miscarried[37]; or they proposed an act of outlawry

[1335] Dion Cassius (Zonaras, VII.24) expressly mentions that Camillus was dictator, and says it was for the fourth time: and Livy's narrative shews that C. Servilius at the period of the trial was master of the horse. *Inter quos C. Servilium magistrum equitum absentem nominatum*: VI. 20. He had held this office indeed in 366; but Livy cannot possibly have meant that it was then that Manlius saved his life; nor do the words of Pliny, VII.29, prove that such was the case. Livy on this occasion, as with regard to the year 369 (VI.6), let himself be misled by the notion that a military tribune, though he might be invested with dictatorial power, could not be appointed dictator.

[36] The master of the horse at least had previously been absent.

[37] *In Petelinum lucum extra portam Nomentanam concilium populi indictum est*: Livy, VII.20. I have already remarkt in Vol. I. p. 426, that the populus here spoken of can be no other than the curies. No annalist can have termed the comitiate of the centuries a *concilium populi*, which the assembly of the curies was, just as that of the commonalty was a *concilium plebis*, and was called so. Besides, the centuries never met in any other place than the Field of Mars: whereas the patrician populus was also convened in a grove, the *esculetum*, when they adopted the Hortensian law. Some of the annals only mentioned the tribunes as the accusers of Manlius, others only the questors: Livy, VI.19, 20. In opposition to the practice I have had to find fault with in such a number of instances, where two different accounts of the same thing have been tackt together as if they had been different events, we here find an example of the contrary, which in early Roman history is extremely rare. It is a fine idea that the people could not summon heart to pronounce sentence with the Capitol before their eyes; but the fate of Manlius did not turn upon this. The account given by Dionysius (to judge from the Exc. 28. p. 32, and from Plutarch, Camill. c. 36) seems to have agreed entirely with Livy's.

against him. The latter seems to me the more probable supposition: for although the Twelve Tables had forbidden laws against individuals, yet the assent of the commonalty, which cannot have been taken into account in them, may have given the matter a different aspect[1338]. The council of the patrician populus, assembled in the Petelian grove, before the Nomentan gate, condemned Manlius to death.

This sentence was not unjust, if he was already in insurrection. But who can certify us that this very outlawry did not drive the illfated hero to that step, when otherwise perhaps he would never have gone so far astray? That he did take this step,—that he did not fall a passive victim, as is assumed in Livy's story, which would therefore seem to place his innocence beyond doubt,—is a fact with regard to which Dion has preserved an account taken, like many other things in his history, from a most authentic source: only he has fallen into the errour, so common with other Roman historians, of combining it incongruously with the usually received one. When separated from the latter, it sounds no less trustworthy than characteristic. According to it, Manlius with his party was master of the Capitol, and at open war with the republic. But the plebeians of rank had all abandoned him; and he was too weak to despise any aid. A slave, who feigned to have crept through the sentinels stationed by the dictator, made his way up to the Capitol, and gave out that he was come as a deputy from a conspiracy of his class. Manlius, who was walking to and fro upon the platform on the edge of the steep precipice, gave him audience without suspicion. In a lonely spot, the traitor darted upon him, and pusht him down the rock[39]. Afterages, ashamed of this dastardly piece of

[1338] This is what I had in view above, in p. 503.

[39] Dion, fr. XXXI. Reim. compared with Zonaras (VII. 24), with whose help that fragment becomes intelligible. Nothing can be

treachery, related that he was thrown down by the tribunes[1340]. Others said he was scourged and beheaded[41]; perhaps on no other ground than this was the way in which a sentence of death pronounced by the curies would have been carried into effect; though it is possible that he may have been taken up alive, and been executed.

As Manlius had been able to make himself master of the citadel from having a house there, an ordinance was past that in future no patrician should live on the Capitoline. Not that the curies intended this as a stigma upon their own order, or that the plebeians were deemed worthy of greater confidence. But a privilege of their own was now abolisht: and henceforward nobody whatever was to dwell in the citadel, which the plebeians had always been prohibited from doing[42]. The house which had belonged to Manlius was razed; and according to one account its site was planted with two groves; according

worse contrived than the way in which the story is strung together. Manlius, it is said, was merely seized in order to be brought before the centuries: then follows his double trial; and after all he is again thrown down the Tarpeian rock. This time he died, though previously he had been so little hurt, that he was able to harangue the people. He had been in open insurrection; and yet he was acquitted. In such a case there would have been no trial at all: the dictator would have ordered him to be put to death. Diodorus too speaks of Manlius as having been overpowered in an open insurrection: *ἐπιβαλόμενος τυράννιδι καὶ κρατηθεὶς ἀνῃρέθη.* xv. 35.

1340 Such is the account given by Livy, Dionysius (in the Excerpta, and in Plutarch), and Dion, in unison with Varro, quoted by Gellius, xvii. 21: according to which the tribunes themselves must have been the executioners; since they had no right to order the execution of any sentence, especially against a patrician, inasmuch as they were not a *magistratus populi*; but they had the right of slaying a person with their own hands: see note 372.

41 Cornelius Nepos, quoted by Gellius, xvii. 21: this was the punishment for a *perduellio* who was to be executed *more majorum* on a charge brought against him by the duumvirs.

42 For this reason the Capitoline hill was not in any of the plebeian regions, and does not occur in Varro's topography of the city.

to another the temple of Juno Moneta, and subsequently the mint, was built there[1343]. The Manlian house too resolved that none of its patrician members should ever again bear the name of Marcus[44].

M. Manlius was put to death in the year 371. The people mourned over him; and a pestilence and dearth, which ensued soon after, and aggravated their distress, were regarded as a punishment sent by the gods to avenge the preserver of their temples[45].

[1343] The speech Pro Domo, 28 (101). Livy, VI. 20. Plutarch, Camill. c. 36.

[44] As the Claudian house once forbad the name of Lucius, because two of its members bearing that name had been condemned, one for murder, the other for highway robbery.

[45] By a singular play of fortune the fabulous splendour with which poetical tradition environed Camillus, was transferred among the Byzantines to his illfated rival. Johannes Malalas (Chronogr VII. p. 233-239) relates, on the authority of a writer called Brunichius, that Mallio Capitolinus, having been banisht from Rome by the malice of his enemies, retired to his estates near Aquileia. After the taking of the city however the senate repented, and named him general: whereupon he collected the legions from the fortresses, with their aid relieved the Capitol, slew Brennus with his own hand, was then made supreme head of the commonwealth, and drove out his arch-enemy, the traitorous senator Februarius, who was sprung from a Gallic race. The same story is found in Cedrenus. Brunichius assuredly is not a forged name, like that of the author of the lesser parallels, of the treatise *de fluviis*, of the scholiast on the Ibis, perhaps also that of the Ravenna geographer: it is true he was not a Roman: his name is evidently a Gothic one, like Wittich. It is very easy to conceive that the narratives, which the German setlers found in Italy already restored to their ancient character of legends, would on the one hand be imperfectly apprehended by them, and on the other treated with the same freedom with which they were accustomed to deal with their own indigenous hereditary traditions. Traces of ancient history entirely disfigured in popular tales are to be found at least no long time after the fall of the western empire. Evident marks of such an origin are discoverable in the story of Camillus in the Commentary on the sixth book of the Aeneid (V. 826), known by the name of Servius, but belonging in fact to the number of those of which we have merely an extract, made without any judgement,

As the senate after the death of Maelius had tried to conciliate the people by selling corn at a low price, so now, in 372, it resolved on making an assignment of the Pomptine district, which the tribunes had already demanded four years before[1346]. This settlement however was destroyed soon after, owing to the loss of Satricum, and only a few of the unfortunate colonists escaped. More favorable auspices attended those who, renouncing their civic franchise, went with the view of acquiring property to the Latin colonies of Sutrium in 372, of Setia in 373, and of Nepete in 382[47].

It is a fact of some importance in the history of the constitution, that, when the senate and houses had resolved to declare war in 372, the decree was brought

and with many interpolations between the sixth and tenth centuries by one of the wretched grammatical schools of those times. The way in which Pisaurum, the place where the victory was gained, is mentioned, is a clear token of a late age: for the etymological explanation which derives it from the Italian *pesare*, proves that it was already pronounced *Pesaurum*. A novel incident in the tale is, that Camillus afterward goes back into exile. The great names of ancient story continued to live from their inherent immortality; but the imagination sported with them no less capriciously than the prattling of a child, or than the romances of chivalry did with history and geography. Thus Catiline at the beginning of the middle ages was turned into the hero of the Florentine chronicles: thus Hannibal in the Roman traditions of the tenth century was a Roman general, from whom a family in the city traced its pedigree. It is true this was harmless enough, and more acceptable to the spirits of the departed than complete oblivion, so long as history lay in its grave. All that Malalas knows of Roman history before Augustus is of this kind: he tells us how Romulus instituted the factions of the Circus, and how Brutus made the slave Vindicius a count.

1346 Livy, VI. 5. 21.

47 Such are the dates given by Velleius. Livy places the colony at Setia in 376, the one at Nepete in 372 (VI. 30. 21), and passes over Sutrium. Satricum was a colony of Romans: such did not come within the plan of the list in Velleius; nor ought any change to be made either in his text or in that of Livy, VI. 16.

before the commonalty for its acceptance[1348]; whereas the custom had previously been to submit such matters to the approval of the centuries[49]. To the people however any alleviation of its distress would have been more acceptable than such improvements in the constitution, or than the compact between the chiefs of the two orders, by which the patricians in 376 allowed plebeian military tribunes to be again elected, after an interval of seventeen years; more especially as they had only the name of the office. Its power was arbitrarily usurpt by their patrician collegues, who were very unfortunate in the exercise of it. This however did not prevent the ruling faction from again excluding all the plebeian candidates except one the next year.

The compact just mentioned was extorted by the tribunes, who would neither allow the debtors to be consigned to their creditors, nor troops to be levied, till the approach of danger obliged them to give way on the latter point. When they renewed their intercession in 377, it was agreed that, so long as the war lasted, no judgement should be given on such debts as might become due, nor should any tribute be imposed. Perhaps it was found possible, during such brief campaigns as that of the dictator T. Quinctius, to pay the troops with the produce of the tenth: or perhaps the plebeians discovered that it was a less evil to go without pay, now that the senate could not keep the legions for an indefinite term in the field. This was the third year that censors were appointed to inquire into the state of debts, and to alleviate it: but, in compliance with the views of their faction, they did nothing toward accomplishing this charge, and even aggravated the existing load of debt by imposing a tribute for building the walls[50]. The appointment

1348 Livy, VI. 21 : Omnes tribus bellum jusserunt.

49 See p.427, note 946.

50 Livy, VI. 32. The disgust felt at the pretenses brought forward to frustrate the census (*ne rem agerent bello impediti sunt* : VI. 31)

of L. Aemilius and his collegues[1351] as military tribunes for the next year, 378, Livy says was brought about forcibly by the patricians[52]. This agrees with the statement of Diodorus, that some time had previously been spent in tumults and interreigns, because one party wanted to have an election of consuls[53]. The sincere lovers of their country seem again on this occasion, when the enemy took the field, to have resolved with sorrow to yield to the insolent injustice of the patricians.

The universal distress had now reacht its highest pitch. Debtors were every day consigned to slavery, and dragged to the private dungeons. The commonalty sank under its misery into a state of gloomy submission: while the question with regard to the corporate privileges of the two orders, which had been so vehemently contested at the very beginning of the century now verging toward its close, seemed to be entirely settled in favour of the patricians[54]. The number of free citizens was

is exprest in v. 27: *eam ludificationem—ferendam negabant.* The tribunes stop all legal proceedings and the levies, *donec inspecto aere alieno, initaque ratione minuendi ejus, sciat unusquisque quid sui, quid alieni sit.*

[1351] This mode of designating a numerous body of magistrates by the expression, the first and his collegues, is usual in the Florentine chronicles.

[52] Coacta principum opibus: vi. 32.

[53] xv. 61. Ol. 102. 4. Παρὰ Ῥωμαίοις ἐγένετο στάσις, τῶν μὲν οἰομένων δεῖν ὑπάτους, τῶν δὲ χιλιάρχους αἱρεῖσθαι. ἐπὶ μὲν οὖν τινα χρόνον ἀναρχία τὴν στάσιν ὑπέλαβε, μετὰ δὲ ταῦτα ἔδοξε χιλιάρχους αἱρεῖσθαι ἕξ. As Diodorus assuredly never adds anything out of his own head, we cannot suppose that he was speaking by mistake of the Licinian bill. Consequently the disturbances about the Licinian law, which Livy places in the year of these military tribunes, had either begun under those of the year before, or the patricians again wanted to have consuls for the same reasons as before the coming of the Gauls.

[54] Livy, vi. 34. In urbe vis patrum in dies, miseriaque plebis crescebant—cum jam ex re nihil dari posset, fama et corpore judicati atque addicti creditoribus satisfaciebant; poenaque in vicem fidei cesserat. Adeo ergo obnoxios demiserant animos, non infimi solum sed principes etiam plebis, ut—ne ad plebeios quidem magistratus

visibly decreasing. Those who remained were reduced to a state of dependence by their debts. Rome was on the point of degenerating into a miserable oligarchy. Her name, as one of the Latin towns recorded in Greek books, supposing that such could have come down to us without the universal empire of the Romans, would have been the utmost that we should have known of her, had not her irretrievable decline been arrested at this moment by the appearance of two men who changed the fate of their country and of the world.

Our forefathers, who sought comfort in proverbs, used to say,—when the people's tale of bricks is doubled, Moses is at hand. This is a delusive confidence. The Greeks have kept on sinking from one stage of misery and servitude to a still lower: nor has the people of Moses been visited by any second deliverer, though by many a false prophet, who has plunged it into fresh and more terrible calamities. There is even danger in such a hope: for it may lead men to put faith in those lying spirits that come forward in gloomy times with promises, and urge them to desperate enterprises, bringing on a state of things still worse than the evil already deemed intolerably degrading. The two Roman tribunes however were deliverers, such as heaven in its mercy does indeed send at times when the need is the sorest. Their measures were an unmixt blessing; because the nation was still sound and regarded its institutions, when reformed, as sacred; and because they themselves were content with restoring that fitness which certain parts had lost through the changes of time; because they carried back the constitution to its original idea, and did not dream of creating a new one; because they did not violate any tie in the commonwealth, but persevered indefatigably until the reform was accomplisht according to all the rules of law.

capessendos ulli viro acri experientique animus esset: possessionemque honoris, usurpati modo a plebe per paucos annos, recuperasse in perpetuum patres viderentur.

APPENDIX I.

ON THE ROMAN MODE OF PARTITIONING LANDED PROPERTY, AND ON THE *LIMITATIO*.[1]

THE following classification, while it is strictly adapted to the notions of the Romans, gives us the peculiar terms of their ancient national law.

Ager, a district, was the whole territory belonging to any civic community, in opposition to *terra,* a country, which comprised many such proprietary districts, as for instance *terra Italia*, *Graecia*[2]. All landed property (*ager* in its restricted sense) was either Roman or forein, *aut Romanus aut peregrinus.* Under the head of forein came even that of isopolitan nations.

All Roman land was either the property of the state (common land, domain), or private property, *aut publicus aut privatus.*

[1] The dissertation on the agrarian institutions in the first edition of this volume embraced the whole range of those inquiries which originally and by degrees led me beyond their own circle to a critical examination of Roman history. At that time I felt a great interest even in their minutest details; and this partiality hindered my noticing that they were carried to an inordinate length—a fault which has now been remedied in the chapter on the Public Land and its Occupation,—and that the following investigation was not necessary, like the contents of that chapter, to render the history intelligible. In an appendix it will not cause any interruption; and it explains certain very ancient institutions peculiar to the Romans.

[2] Varro de L. L. VII. 2 (VI. p. 84). Ut ager Tusculanus sic Calydonius, ager est non terra,

The landed property of the state was either consecrated to the gods (*sacer*), or allotted to men to reap its fruits (*profanus, humani juris*). A later view made this the primary division, and then distinguisht the land belonging to man into public property and private property[3]: but a treatise, evidently written in the time of Domitian, and assuredly by Frontinus[4],—the only work among those of the Agrimensores which can be accounted a part of classical literature, or was composed with any real legal knowledge,—says that the soil of the sacred groves was indisputably the property of the Roman people[5]. This is confirmed by the statement in Livy, that the temple and grove of Juno at Lanuvium became the joint property of the Roman people and of the Lanuvine municipals, when the latter were admitted to the civic franchise[6].

All the landed property of the state, belonging to man, was either restored to the persons who had lost the right of property in it, or was made over to citizens or to isopolites to possess it (*aut redditus aut occupatus*).

All private property was either set apart from the public domain (*ex publico factus privatus*); or it had become Roman by a grant of the civic franchise to a forein community (*ager municipalis*). The former was either acquired by sale (*quaestorius*), or by assignment (*assignatus*): and that acquired by assignment was either bestowed on all the plebeians in equal lots,—that is to say, on every father of a family; for a more extensive

[3] Gaius, II. 2-9.

[4] It must assuredly have been during the lifetime of this tyrant, whose execrated name was erazed from public monuments after his death, that he was called *praestantissimus Domitianus*, as he is in the fragment *de controversiis agrorum* publisht by Rigaltius, and ascribed to Aggenus: tit. de subsecivis, p. 69. ed. Goesii. Frontinus wrote his book on stratagems during his reign, and was also a writer on land-measurement.

[5] Tit. de locis sacris et religiosis, p. 74.

[6] VIII. 14.

grant was an exception[7],—(*viritanus*[8]), or merely on a definite number united into a social community (*colonicus*). If the colony was a Latin one, the land assigned lost the character of Roman land, and became forein, just as the Roman who went thither gave up his civic rights: but it still retained the right of *commercium*.

The municipal land was either the common land which every town in Italy,—not to speak of other countries,—had possest in the days of its independence (*ager vectigalis* in the Pandects); or it was private property (*privatus*). The same was the case with the colonies, even the military ones.

The ancient system of law to which this classification belonged, has entirely perisht. But another system, which designated its chief classes by their external form, has been preserved in the works of the Agrimensores, the most unintelligible and most neglected writers of Roman literature, to which in fact they do not belong any more than treatises by uneducated persons on matters of everyday life do to ours. But nothing gains so much in value by the progress of time as such writings: a technological work by an ancient would now be more precious than one by any save a firstrate poet. Thus these works, which a Roman, if the singular art on which they treated was not his peculiar calling, must have regarded with utter indifference, since almost everybody, who was not a thoroughpaced townsman, had a notion of its fundamental principles from observation, are to us not undeservedly an object of laborious study. For it is well worth the trouble to become acquainted,—nor is there any other way of gaining such an acquaintance,—with the forms by which the Romans markt out the land set apart as private property from the public domain, and circumscribed its particular portions with unchangeable

[7] The assignment of the Veientine district is spoken of as such in Livy, v. 30.

[8] Festus, on this word.

boundaries;—forms, which were older than the city, and which, though to all appearance a fantastical and perishable artificial contrivance, with the inherent vitality of all the Roman institutions outlived the downfall of the western empire for about five centuries.

These forms, which, Varro tells us, were invented by the Etruscans, and grounded on their observation of the heavens[9], seem to have been adopted not only by the Latins, but also by the Italian nations, since they are found among the Italian Greeks, in whose mother-country one may confidently assert there was no institution any way akin to them. On the Heraclean tables the situation of pieces of land is described by expressions which, Mazzochi rightly perceived, belong to a mode of marking boundaries analogous to the Roman[10]. From this we may conclude that the district which the Sybarites at Thurii set apart for themselves from the portion to be assigned to their fellowcitizens, bore the character and the forms of the Italian agrarian institutions, just as their pretensions to the exclusive possession of all civic honours corresponded to those of the patricians[11].

But according to the agrarian institutions no land was held to be markt by boundaries, save what had been divided in conformity to the practice of the state, and to that mode of observing the heavens which was adopted in taking auspices. Every other kind of boundary was regarded by the Romans as indefinite. The subject

[9] Varro, Fragm. de limitibus (quoted by Frontinus), p.215; where we must read *disciplinam etruscam* instead of *rusticam*. Hyginus, de limitib. p.150. The mention of the aruspicy refers to the division of the vault of the sky for the interpretation of lightning; the same however prevailed in taking the auspices, an institution derived from the Sabellians: and perhaps this is another instance in which a Tuscan rite has been ascribed to the Etruscans.

[10] Tab. Herac. p.180-182. What answers to the *limes* is designated by an unheard-of word, *ἄντομος*.

[11] Diodorus, XII.11.

treated of by the Agrimensores is land thus markt out: other land they only mention by way of contrast.

Every field which the republic separated from the common domain, was markt out by boundaries. No separation could take place without such a demarcation: and wherever there were any traces of the latter, although particular estates within the region subjected to it might still be part of the domain, it was yet a certain proof that such a separation had taken place.

On the other hand every municipal, as well as every forein region, was held to be without boundaries (*arcifinius*), or merely limited by natural or arbitrary landmarks. The most important part of this class however was the Roman public domain[12]. Here two distinct notions are confounded by the later writers. The public domain, as well as every piece of landed property not assigned by the state, came under the head of *ager arcifinius*. Even after the practice, which perhaps originated in the time of Trajan, was introduced of measuring and marking out the domain in the provinces, though in particular cases this was erroneously done according to the rules of the Roman *limitatio*, the regular division was into strips and plots (*per strigas et scamna*). The expression *ager occupatorius* however was by no means of the same extent, but was confined to the public land, strictly so called, and designated the tenure under which it was held.

The principle of the Roman *limitatio* was to draw lines toward the four quarters of the heavens, parallel and crosswise, in order to effect a uniform division of the lots of land which were transferred from the public domain to private property, and to fix immutable boundaries for them[13]. Hence these boundaries (the *limites*)

[12] Latifundia arcentium vicinos: Pliny, XVIII. 5.

[13] Of which, in the assignments to plebeians, these very lines mostly formed two sides and an angle, or at all events one side, and

were markt by a slip of land left for the purpose, untoucht by cultivation, as balks or ways; as their extremities were by a row of stones inscribed with numerals.

As the vault of the heavens was called *templum*, and was the original idea of a temple, so the name of temple was given to all that space on earth which an augur markt out in his mind, according to the cardinal points, as far as his eye reacht, for the purpose of taking auspices. No auspices or auguries could be taken except in a temple. But the whole city was one through its original inauguration: a camp too was a temple, because it was necessary to observe auspices in it: hence walls and gates were *sancta:* hence the unchangeableness of the *pomoerium.* For whatever was determined in this way was to remain unalterably fixt, unless its removal was enjoined by more powerful auspices. This however did not hallow it: many temples, as we learn from Varro, were not dedicated to the gods, and consequently were not holy; while on the other hand the churches of the gods,—the expression must be allowed for this once,—were not necessarily temples[14]: there were some in which auspices could not be taken. Nevertheless, though the usage be erroneous, we must comply with it, more especially to avoid employing an offensive expression, and must call all buildings dedicated to the gods temples indiscriminately, as if what was an accidental feature had been the main point. In like manner a whole district markt out under the auspices for partition was in fact a temple, and unalterable. There is a reference to this in the opinion pronounced by Cicero, in his capacity of augur, in an affair which according to our view would be a question of constitutional law, that where a colony had

unquestionably determined the position of the other sides and angles. The employment of the *limes* to mark the boundary gave rise to its ordinary meaning.

[14] Varro, de L. L. vii. 2 (vi. p. 82).

once been founded under regular auspices, so long as it subsisted undestroyed, no new one could be settled[15]. Thus every assignment of lands, and even every sale of domain-lands, acquired a religious security: it could never be resumed by the state.

With regard to the position of an augur, when he was determining a temple, we find three different statements. According to Livy[16], at the inauguration of a king, — and, as appears from Dionysius[17], at that of a consul also, — he lookt toward the east, and called the north left, the south right. By his side, facing the south, sat the person who was to be inaugurated. There is a connexion between this view and the direction of the *limites* in later times from west to east[18]. According to Varro[19] he lookt southward, and the east was to his left: and the same is implied by the division of the heavenly vault in Festus[20], and in a mutilate passage which he quotes from Serv. Sulpicius[21]. But according to Frontinus[22] the west was the point of view taken in the division of land: hence he calls the *limites* to the west of a meridian line drawn through the spot where the augur stood *anticae*, those to the east of it *posticae*: whereas Serv. Sulpicius must have applied the terms *anticae* and *posticae* to the parallel lines on the south and on the north of the one running from east to west on which the augur stood[23]. These three accounts, though so much at variance, may, I think, be reconciled by means of a piece of information preserved out of Varro. The augur conceived himself to be looking in the same manner in which the gods lookt on the earth: the dwelling of the gods was believed to be in the north

15 Philip. II. 40 (102). 16 I. 18. 17 II. 5.

18 Hyginus, de limitib. p. 152.

19 In the passage quoted in note 9, and in Festus, Sinistrae.

20 Under Posticum ostium. 21 Under Postica.

22 De limitib. p. 215. Hyginus, de limitib. p. 150.

23 Festus, Sinistrae.

of the earth[21]. In the same region do the Indians place their Meru, the mountain of the gods. Even the Greeks regarded this extremity of the earth, beyond the Boreas, as a blessed country, the abode of men beloved by the gods. From the north the gods directed their eye toward the other three points of the heavens, to survey the earth: but when they turned their back upon it in wrath, their left-hand stretcht toward the west: and that they did so when the auspices were unfavorable, was assuredly the doctrine of the augurs. So that in substance there is no contradiction in these three different traditions. That, so long as the ancient religion remained in force, there were in fact two points of view, one toward the south and one toward the west, with reference to the division of lands, is clear from the passages quoted above. The former had been forgotten in the time of the later landsurveyors: it seems however to have been the very oldest, inasmuch as the *cardo* the principal line in such divisions, ran from north to south.

In the earliest ages the person who measured out land, was indisputably himself an augur, accompanied by Etruscan priests, or by such as had studied under them; these being assuredly the only possessors of the little mathematical knowledge which Rome borrowed for its domestic uses from the store, perhaps the rich store, of the Etruscans. The augur, taking his stand, fixt his mind on the boundaries determined in the ordinance of the senate or in the law, for the purpose of protecting the inauguration against any slip of the tongue by the salvo that nothing but his intention was to hold good. In the assignments under the emperors he no longer took any part; and his place was occupied by the *agrimensor:* who also began with ascertaining his direction, and that too according to the true cardinal points, not the accidental place of sunrise and sunset: though the

[21] Quoted by Festus, under Sinistrae.

latter method was sometimes adopted,—a proof of the ignorance of the native Roman landsurveyors[25]. Having done this he drew the main line from south to north, which, as corresponding to the axis of the world, was termed *cardo*. The line which cut it at right angles bore the name of *decumanus*, probably from making the figure of a cross, which resembles the numeral X,—like *decussatus*. These two principal lines were prolonged to the extremity of the district to be divided; and parallel to these, at a greater or less distance, as was required by the size of the quadrangles into which the district was to be parceled out, other lines were drawn, which were designated by the name of the principal line they ran parallel to; the latter being distinguisht from them by the adjunct *maximus*. All these were indicated on the ground, so far as its nature allowed, by balks, of which those representing the principal lines were the widest: the next in width, if we count after the Greek fashion, was every sixth, or, according to the Roman practice with regard both to space and time, — which reckoned none twice over, and the one next to the principal line as the first,—every fifth[26].

Now these balks, being the visible representatives of the imaginary lines, were called *limites;* they continued public property; and in Italy all of them, not merely the broader ones, were reserved for highways. The surface of them was deducted from the ground to be divided: so that the squares bordering on the broader roads came out smaller than the remainder. The motive for this no doubt was to spare the ignorant landsurveyor every calculation in the slightest degree complicated[27].

[25] Hyginus, de limitib. p. 153.

[26] In like manner *quinquennale tempus* among the Romans unquestionably meant a period of five years, whereas the Greek πενταετηρὶς only contained four.

[27] Hyginus, de limitib. p. 152. Seven lots of seven jugers apiece, in the century of fifty, remained undiminisht.

The distance between the *limites* was determined by the size of the squares or centuries, as they were called, bounded by them. I have remarkt, that the oldest centuries assigned to the populus contained two hundred jugers, those to the plebs fifty; and that those of two hundred and ten also refer to assignments of seven jugers to each plebeian[28]: the others belong to a later age, and have nothing to do with the old state of things. Even in the time of the triumvirate, assignments were expressly made according to centuries of fifty jugers, which name the agrimensors refused to apply to the old questorian plots of land. For they lookt on the juger merely as a unit, and thought the use of the word century for a greater number intelligible, but inconceivable for a less. The juger, however, as the very name implies, was a double measure[29]: the real unit in the Roman landmeasure was the *actus*, containing 14400 square feet, that is, a square of which each side was 120 feet[30]. A square area of fifty jugers was the square of ten *actus*[31], and was just as much a century, that is, of a hundred *actus*, as the Romulean was of a hundred *heredia*[32].

The proportion between the square-root of the Roman *actus* or *fundus,* twelve roods of ten feet apiece, and the Etruscan or Umbrian *versus* or *vorsus,*—which, as we learn from a fragment of Frontinus[33], contained ten such roods, and which Varro[34], tells us was in use in Campania,—was just the same as that between the Roman civil and the cyclic year. Hence as the *limites* of the

[28] P. 156, note 329; p. 163, note 355.

[29] Columella, v. 1.

[30] It can only have been in consequence of a proximate equality between this and the Gallic *aripennis* that the Romans in Gaul used the two words as equivalent: nor can the *arpent* of whatever size be exactly equal to the latter.

[31] Denis actibus L. jugera incluserunt: Siculus Flaccus, p. 2.

[32] See p. 162.

[33] Fragm. de limitib. p. 216.

[34] De re r. I. 10. See Vol. I. p. 284

plebeian centuries, both the *decumani* and the *cardines*, were drawn at intervals of twelve hundred feet, those of the Etruscans without doubt were a thousand feet apart; so that twelve of their centuries were equivalent to ten Roman ones.

The division according to this system embraced the whole district the assignment of which had been ordained: but only the land fit for tillage and for fruit-trees[35] was assigned or granted as property. The agrarian ordinance determined the region to be divided, the size of the allotments, and the number of persons to receive them. The distribution was effected by lot, as many claimants as made up a century with the collective amount of their shares, being clast under one number; while tickets for all the centuries consisting entirely of cultivable land were in like manner thrown into an urn, each markt with the numbers on its boundary-lines: these were then drawn out one after another, and as each came forth it was assigned to the corresponding number of the names. The quality of the soil was left to chance: the sole points considered were the dimensions, and the land's having been previously in cultivation. It is as a very rare exception, in cases where the difference in the quality of the soil was inordinately great, that any compensation on that account is spoken of in the imperial colonies.

A necessary consequence from the manner of making these allotments was, that all the centuries which either wholly or in part consisted of land unfit for cultivation, or which reaching to the irregular border did not make up full measure, were not distributed at all. The persons to whom they might have been allotted would not have had their fair share. These pieces of land continued to be the property of the Roman people under the

[35] Qua falx et arater ierit: Hyginus, de limitib. p. 192. This is evidently a very ancient provision: Hyginus indeed merely quotes it from agrarian laws under Augustus; but he knows nothing about the earlier ones.

name of *subseciva* (remnants), as did likewise such complete centuries of cultivated land as might be left over at the allotment. The cultivated remnants were now and then granted to the new proprietors in common, but more frequently were occupied by the state as part of its domain. The forests, pastures, and wastes in the district were almost all bestowed upon the community as public property: for, since none but arable land was ever distributed, a common pasture was absolutely necessary. If the cultivated land proved inadequate to give each individual his full share, in the days of the commonwealth another portion of the domains would have been taken to make up the deficiency: in the military colonies this was done by the lawless confiscation of the adjacent district, a fate experienced by Mantua.

The land which was regularly limited, and that which was indeterminate in form, along with all the other characteristics of quiritary property, had both of them that of being free from direct taxes; but their value was registered in the census, and tribute was levied accordingly. In other respects the limited fields had certain legal peculiarities, concerning which scarcely any other express statement is preserved, than that they had no right to alluvial land[36], the determinateness of their size being the condition of their existence. This kind of landed property, which under the emperors was almost the prevailing one in most parts of Italy, and was common in the western provinces, seems to have been extremely rare in the East: hence no notice was taken of it in the extracts made from the Pandects. Consequently, though even its most striking peculiarities are not mentioned, this cannot be esteemed a proof against their existence. We are justified in drawing inferences from internal arguments on points which the accidental

[36] L. 16. D. de adquir. rer. dom. (XLI. 1). L. 1. § 6. D. de fluminib. (XLIII. 12.)

destruction of testimonies bearing on them has perhaps made it for ever impossible to establish by documentary evidence; unless this be reserved for some more learned or more fortunate inquirer.

It is clear that the art of the *agrimensores*, who profest to discover the original boundaries of estates, must have been utterly baffled, if the proprietors had the right of alienating pieces of land of whatever extent they pleased: and as we are accustomed to take such a right for granted, we shall for this very reason regard the profession as useless and absurd. It might be their business to determine the boundaries at the first; but from that time forward all questions must have been decided by deeds of sale and other documents: and if these were not drawn up with complete geometrical exactness, no property could be more insecure than purchases of land markt out by *limites*, where the landholders in the same century might raise the *controversia de modo.*

This leads us to conjecture that a *fundus* assigned by the state was considered as one entire farm, as a whole the limits of which could not be changed; a notion which seems to be confirmed by the original purposes of the *limitatio.*

From the Pandects, and from inscriptions and ancient documents, it is known that a *fundus* usually bore a peculiar name; which did not change with the possessor for the time being, but was so permanent, that even at the present day, if any one were to institute a search for the purpose, especially in the Roman Campagna, he would undoubtedly find many hundred clearly distinguishable instances of Roman names of estates. Of the four *fundi* mentioned in the donation of A. Quinctilius at Ferentinum, two have retained their name almost unchanged[37]: nor is this mentioned as in any way remarkable. St Jerome tells us that the *fundus*, which the poet Attius

[37] Marianna Dionigi (*viaggj in alcune città del Lazio*, p. 18)

received for his share at the assignment of lands to the colony at Pisaurum, bore his name[38]: and, although such permanent designations might prevail even in districts which had not been partitioned, it is probable that in land which was assigned, like that at Pisaurum, they were taken from the first grantee, under whose name the farm was registered in the landroll.

Now in the oldest records of the suburbicarian regions the landed estates are almost always designated by some such name; and the sale or transfer of them, when the whole was not alienated, was in parts according to the duodecimal scale. This accords with the mention, which we find so frequently in the Pandects, of many proprietors of the same *fundus*, a thing so strange to our ears; as well as with a fact belonging to the early history of Rome concerning the sixteen Aelii who held a single farm in the Veientine district as tenants in common[39].

This did not preclude the division of estates[40], nor even the sale of duodecimal parts of them: but the original boundaries circumscribed them as one integral whole; and all the parts were pledged for the conditions of the first assignment. It has also been remarkt above, how important the unchangeableness of these units was for the maintenance of regularity in the landrolls of the censors*.

remarks that the *fundi Roianus* and *Ceponianus*, are without doubt the same estates which are now called *la Roana* and *la Cipollara*.

[38] Chron. n. 1877. [39] Valerius Maximus, IV. 4. 8.

[40] Hence the *termini comportionales*. * See p. 407.

APPENDIX II.

ON THE AGRIMENSORES*.

In the investigations concerning the agrarian institutions, I have made frequent and considerable use of the works and fragments which treat of the art of dividing lands. The collection of these works, at least in the latest of the three different editions which were publisht during the sixteenth and seventeenth centuries, each subsequent one containing fresh matter derived from manuscripts, is by no means rare even in common private libraries; yet, as has been remarkt already, it is less known than any other work of ancient profane literature. One would hardly believe that in books on literary history it is clast under the head of agriculture: and although a few quotations here and there seem to shew that in our days these writings are rather less

* The dissertation on the *Agrimensores*, which stood in the appendix to the first edition, has been left out by the author in the second. Nevertheless, as is not only throws great light on one of the most obscure portions of ancient literature, but is intimately connected with the subject of the foregoing appendix, and indeed with those disquisitions concerning the agrarian institutions out of which this history originally sprang, the translators have thought it advisable to retain as much of it as might be interesting to the general scholar, omitting the minuter critical remarks, in which none but a reader of the *Agrimensores* would take any concern.

neglected than they used to be, yet it is quite plain that they are still a sealed mysterious book, wherein only such scattered passages are noticed as are intelligible when taken apart from the rest, such as may be found even in the volumes of the cabbalists.

For me these writings from several causes have had a peculiar charm. There is always some kind of attraction in whatever is mysterious and difficult: and as I derived much instruction from them when I learnt in some degree to understand them, they called forth a feeling of gratitude, which excites a particularly lively interest even in neglected books. We lose ourselves in the contemplation of the destinies of Rome and the changes that Italy has undergone, in reading these singular works, where at one moment we fall in with a fragment of a treatise by an Etruscan aruspex written in the fifth century of the city, in another place hear the words of an engineer who served under Trajan during the conquest of Dacia, and measured the highth of the Transylvanian Alps, and lastly, in the most recent of the various collections, meet with extracts from a book by the wise Pope Gerbert, who was the teacher of his age at the close of the tenth century of our era. All the epochs of Roman history stand here side by side;—the ancient aruspicy and religion, and Christianity;—ordinances of the plebs, and sections of the Theodosian code and the Pandects;—the Latin of the earliest ages, and the embryo Italian of the seventh century. The place in which the collection was made, the time when it was compiled, is a mystery: and when we have solved it we find ourselves at Rome, at the period when the fallen mistress of the world is wrapt in her thickest veil.

A few general remarks therefore, such as may render these writings more easily intelligible, may be allowed to find room here. For when a subject is of importance in itself, it is better to introduce it even in a place which may not be quite appropriate, than to pass it over

altogether. I wish to excite others to take the same interest in it. For I want a qualification which is indispensable to a full understanding of the later fragments: I have never been in Italy, where without doubt, especially in the Campagna, a number of peculiar customs with regard to the partition of lands and the marking of boundary-stones must be subsisting down to this very day, though unnoticed by travelers and even by natives, with the help of which the most obscure parts of these books would at once become clear. Manuscripts are not likely to give us much aid: for the early editions are founded on very ancient ones; and the others which have been compared with these have afforded but scanty gleanings: the dismal confusion of the text arose prior to any that can possibly be preserved: still even this assistance, of which I am wholly destitute, should be called in by any one who undertakes to publish a critical edition.

The business of the Roman *agrimensores* was to measure and divide the districts the assignment of which had been resolved upon,—and a map of which was deposited in the imperial archives, while a copy was placed in those of the colony,—to measure and register the unassigned lands for the state, to measure ordinary lands for the proprietors, to discover and maintain the limits of *fundi* held under an assignment[1], to mark them out on the undivided lands, and by the help of ground-plans and of peculiar marks to detect every illegal alteration of boundaries: in fine it was necessary that they should

[1] In opposition to the conjecture started above in p. 632, that *fundi* held under an assignment were units that could not be altered, somebody might perhaps cite L. 1, C. *fin. regund.* and L. 12. D. eod. the latter of which is inserted in Edict. Theodor. § 105. I believe however that these passages may not only be restricted without any violence to the *ager arcifinius*, but that such declarations could only be made where there was a considerable class of estates which were properly and necessarily of an opposite character.

be acquainted with the laws on boundaries, and with the disputes wont to arise concerning landed property, in which they were sometimes vested with judicial power, sometimes and very frequently appealed to from their knowledge of the subject.

During the decline of the empire they formed a numerous and respectable class, on which Theodosius the Younger conferred the title and rank of *spectabiles:* their labour was rewarded by the state with a very handsome salary. They had regularly establisht schools, like the jurisconsults; and even the students were entitled *clarissimi* by an edict of Theodosius and Valentinian, in Goes, p. 343.

The writings on such branches of their art as were unconnected with mathematics were very numerous; and of these an extensive collection was made, perhaps about the same time with the Theodosian code, the twelfth book of which collection is cited in ours: see the title of the treatise in p. 220, compared with the note by Rigaltius in p. 276, and Arcadius, p. 259. This collection however contained not merely scientific treatises, like those by Frontinus and Hygenus (for this is the way his name is invariably spelt in the manuscripts), but also the laws concerning the subjects of the craft, and a number of special documents relating to assignments and limitations, and groundplans of the districts subjected to them with the papers thereto belonging. These form the chief part of the short fragments. A writer of their class seems to have been termed *auctor* by them by way of distinction.

The later agrimensors, in conformity to the spirit of their age, invented a number of artifices, of which those of the second century seem to have been totally ignorant, with regard to the shape and the marks of the boundary-stones, with the view of rendering their original position ascertainable in case they were removed. In like manner they spent probably still greater pains in devising symbolical characters to serve instead of detailed

terriers. These there is no chance of our ever being able to understand. All these matters were comprised in their pandects, which were without doubt the subjects explained from their professorial chairs: had they been preserved entire, we should find little difficulty in interpreting them.

To that barbarism and poverty, which began even in the fifth century to spread over Italy, and which before the end of the sixth had already reacht their highest pitch, voluminous works were a useless and troublesome incumbrance. An age unable to produce any good works, is also incapable of reading books. Such was the case then: it seems as if during those unfortunate centuries the faculty of investigating and unfolding truth had totally disappeared. Amid the mysterious processes of the mind, whereby in the course of our lives it creates that world of thought which is our real wealth, we may at least very clearly distinguish between those vivid ideas which spring up and develope themselves to contemplative meditation, whether they originate immediately with ourselves or are transfused into us from others, and those which merely subsist without any life in them under the outward form of the words used to express them. Now as the habit of looking at the external form of ideas is apt to weaken the power of imparting life to them,—and hence in this respect a verbal memory is not unjustly deemed of suspicious value,—so there are nations and ages which are incapable of combining them otherwise than externally, and to which the power of vivifying them seems denied. This must be acknowledged to be true of the oriental nations; nor is it less certain with regard to the centuries which elapst from the downfall of Rome till the revival of Italy. It appears in their works of art, which, however elaborate they may be, are lifeless and unnatural, with a remarkable similarity between their forms and those produced even at this day by the painters of Persia and India: it appears in science,

in their incapacity of advancing beyond the notion of the objects lying immediately before the eye. The age which could produce the glosswriters to explain the lawbooks, by perpetually comparing their contents together, had taken the decisive step out of barbarism, and was already possest of that intellectual freedom from which Italy was able to stride forward to poetry and to the wonders of the arts.

Oral instruction on the business of the agrimensor was still imparted during this wretched state of barbarism; and for this purpose short works on the subject were made use of; not systematic abridgements,—for the age felt no want of such,—but works containing a part of what was to be taught. What was not found in them was supplied by oral tradition. The case was just the same with jurisprudence.

This was the time when that abstract from the old collection which is now remaining was made. The class of landmeasurers continued to subsist; their craft was exercised in all those parts of Italy which were still subject to the Greek empire and to the Roman laws. The subjects of the Lombards indeed not only lost their laws; but an exterminating war almost everywhere transferred the property in the soil to the barbarians, who drew new boundaries to their estates. But the Exarchate, the Roman territory, a large part of southern Italy, and Sicily, retained the constitution which they had received in the time of Justinian.

The rude ignorance of the age is visible in every part of the collection. Its compiler must have had a very confused copy before him, in which leaves of totally different treatises were mixt up together, and others were erroneously split into several ones. He executed his task after the fashion of his time, usually transcribing what he found, or curtailing it by omissions, very rarely condensing the substance, or adding anything to fill up gaps: for the Latinity of the older works is not

corrupted by the insertion of words of a later date except in a very few instances. It is clear that he himself cannot have attacht any meaning to the passages which we find in such complete disorder.

Without oral instruction even the surveyors in those times would have been incapable of making any use of it: such instruction, we can conceive, rendered it intelligible as far as was necessary.

But the agrimensors needed two kinds of knowledge. The measurer of land required geometry enough to give a mechanical solution of such problems as occurred; others, who devoted themselves simply to the task and mystery of determining boundaries, had more need of some acquaintance with law and with the symbolical characters of their craft. This accounts for the origin of those two collections, in part entirely distinct from, in part agreeing with each other, which are found in the very ancient manuscripts, and which since the time of Rigaltius have been mixt up together in print: while from the unsystematical spirit of the age we can easily understand how that which was designed for the land-measurer came nevertheless to contain some things which properly belong to the boundary-setter, and yet are wanting in his collection;—such as the genuine fragments of Frontinus, whether bearing his name, or those under which he is disguised.

We will call the collection, the chief authority for which is the Arcerian manuscript, the first, that which Turnebus publisht, the second. For determining the date of the former we have no such marks as those found in the latter, unequivocally demonstrating the age beyond which it cannot be carried back; since they occur chiefly in treatises which were not contained in the first collection, or, if they were, had a place in the lost leaves at the beginning and end of it. Among these marks is the want of grammatical inflexions, as in the phrase *de latus se* (*at his side*) the nominatives *Frusinone*,

Formias, *Puteolis* (like *Fundis*, *Liparis*, in St Gregory), and such words as *fontana, branca, casale, campania, cambiare*, *de sub*, *flumicellus*, *monticellus*. The extract from the Pandects contained in three manuscripts, of which two at least are of very great antiquity, will not allow us to go back beyond the middle of the sixth century; the quotation from Isidore's Origins p. 290: see the note by Rigaltius) stops us on this side of the beginning of the seventh.

To the seventh century however I think I may with good reason ascribe it, and look upon Rome as the place where it was composed. The former inference I draw from the resemblance already mentioned between its language and that of the age of St Gregory and of the documents belonging to that century: it is altogether rustic, but has no admixture of German. Moreover the most important manuscripts are written in a very old uncial character, such as is hardly found so late as the eighth century. Finally the scribes were perfectly well acquainted with Greek, as appears in two at least of the manuscripts. My reasons for believing it to have been composed at Rome are, that one of the statements is said (p. 145) to have been taken from the archive of Albanum, and that there is no kind of allusion to Ravenna, to which town one would otherwise attribute it.

Would that I could excite some scholar possessing the philological spirit of our age, along with the learning and the industry of the French school of the sixteenth century, to devote them to these venerable ruins, so interesting from the recollections they awaken, and even from the disfigured state in which we find them! Even without leaving his native country, he might gather a rich harvest from the editions publisht by Turnebus and Rigaltius; for Goesius altogether neglected the former, and overlookt much in the latter. What Rigaltius did for the Agrimensores is of great value; the laborious

work of Goesius, of hardly any. It would be necessary to separate the matter added in the later editions, to arrange the fragments which are jumbled together, to try to resolve the book attributed to Simplicius into the leaves which have been preposterously mixt up and patcht together, and then to combine these with the fragment *de controversiis*. The commentary by Aggenus might serve as a guide, and furnish much supplementary matter.

This however is far from enough. An editor of the Agrimensores must also collate the manuscripts, those at least which are of great antiquity. And should fortune then allow him to visit Rome, he should do what no one has yet done, because scarcely any one, except those who are led thither by the love of the arts, knows what he ought to do there, any more than the bulk of mankind know what they ought to do in the whole course of their lives, unless by some fortunate necessity a line is prescribed to them in which they are forced to move on regularly to the end of their time. He should go into the country: he should diligently observe and study to understand the slightest peculiarities: everything is a relic on that sacred ground: in some place or other he will find a key to those difficulties, which we, fettered as we are by the unclassical notions of our northern barbarism, should vainly exercise our ingenuity in solving. Let him cheer himself with the thought that he is engaged upon a work which connects the Etruscans, though through a thousand gradations and distortions, with the latter part of the middle ages.

Italy too is the only country where an answer may be found, in its archives and libraries, to the question, when the ancient institutions of the agrimensors past entirely away. I can only supply a few data for such an answer: my inquiries indeed have not been slack, but unfortunately very much narrowed by the want of means.

It might be expected, and may easily be satisfactorily made out, that in all the Lombard states these ancient institutions were subverted at their conquest, and that they could only maintain their ground in the Roman territory, and in the three Neapolitan republics. In the Greek provinces the writings of the agrimensors could not be made use of on account of their language. The only traces I have found of the *limitatio*, mentioned as a thing well known and still in use, relate to the Roman territory.

In deeds of grant and sale one very often finds the expression, *cum omnibus finibus, terminis*, limitibusque *suis:* it occurs even so late as in a diploma of the year 1049, by Pope Leo IX, given by Ughelli, Italia Sacra, Tom. I. p. 122: this is the latest instance I have met with.

Such a phrase, it is true, might be retained by the notaries for a long time without any meaning in it: when a *limes* however is specified as determining a boundary, then at all events it cannot be disputed that the word is to be taken in its genuine ancient sense. Of this too I will only cite the most recent examples that I am acquainted with.

In a document of the year 961 (Marini, Papiri Diplomatici, n. CII. p. 160, 161) by which a certain count Baldwin gave a *casale* on the Via Appia, six or seven miles from the city, to a Roman convent, one of its boundaries is thus designated; *exinde* per limitem alto majure, *infra silva, recte in arca marmorea antiqua.*

In a Tiburtine document of the year 990 (Marini p. 255) we read in a similar determination of a boundary: *deinde venientem usque in* limite majore *qui dividit inter nostros Episcopio terra que de Marengi, et deinde* ipso limite *venientem in via publica.* Here all the names are Lombard: in the former document they were Roman, with the exception of the donor's.

The same mode of determining boundaries occurs

even so late as in a document of Pope Benedict VIII, of the year 1019: *Sicuti a muro, et a fluvio Tyberis, atque* limitibus *circumdatur*. Ughelli, Tom. I. p. 116.

Pope Gerbert at the end of the tenth century referred to Julius Frontinus and Aggenus Urbicus on the subject of controversies, of the qualities and names of fields, and of boundaries. (Rigaltius, in his notes, p. 240, ed. Goes.) So that all these must still have been questions of practical importance. The same thing is likewise proved by the existence of manuscripts of the eleventh century, which it is probable was also the time when the new abridgement was made.

The Roman statutes, even in the edition of the fifteenth century, contain nothing at all on the point. Terminus was deprived of his honours, after the German emperors, by granting fiefs in the Campagna and round about the city, had extinguisht the venerable but faint remains of antiquity, and had seated barbarism within the walls of Rome.

The glosswriters, living in a Lombard town, could have no practical acquaintance with the ancient institutions. That however they were very well aware what an *ager limitatus* was, and how it was laid out, is proved by their remarks on L. 16. *D. adquir. rer. domin.* The authors too of the gloss on *Tit. C. fin. regund.* were by no means ignorant of the business of the agrimensors. In the note on L. 7. D. cod. on the contrary they are thinking of Lombard institutions, the partition of a common.

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